

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
FTX TRADING LTD. et al., . Case No. 22-11068 (JTD)
Debtors. . (Jointly Administered)

AUSTIN ONUSZ, CEDRIC KESS VAN . Adversary Proceeding
PUTTEN, NICHOLAS J. MARSHALL . No. 22-50513 (JTD)
and HAMAD DAR, on behalf of .
themselves and all others .
similarly situated, .

10 | Plaintiffs,

11 | v.

12 WEST REALM SHIRES INC., WEST
REALM SHIRES SERVICES INC.
13 (D/B/A FTX US), FTX TRADING
LTD., ALAMEDA RESEARCH LLC,
14 SAM BANKMAN-FRIED, ZIXIAO WANG,
NISHAD SINGH, and CAROLINE
15 ELLISON,

16 Defendants.

17
18 ALAMEDA RESEARCH LLC, ALAMEDA
RESEARCH LTD., FTX TRADING
19 LTD., WEST REALM SHIRES, INC
and WEST REALM SHIRES, INC

Plaintiffs,

v.

23 FTX DIGITAL MARKETS LTD., BRIAN . Courtroom No. 5
C. SIMMS, KEVIN G. CAMBRIDGE, . 824 Market Street
and PETER GREAVES, and J. DOES . Wilmington, Delaware 19801
24 1-20, .

Defendants. . Friday, June 9, 2023
9:30 a.m.

TRANSCRIPT OF CONTINUED HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors and
Debtors-in-Possession: Adam G. Landis, Esquire
LANDIS RATH & COBB, LLP
919 Market Street
Suite 1800
Wilmington, Delaware 19801

- and -

Brian D. Glueckstein, Esquire
SULLIVAN & CROMWELL, LLP
125 Broad Street
New York, New York 10004

11 For the US Trustee: Juliet M. Sarkessian, Esquire
12 OFFICE OF THE UNITED STATES TRUSTEE
13 UNITED STATES DEPARTMENT OF JUSTICE
844 King Street
Suite 2207, Lockbox 35
Wilmington, Delaware 19801

For the Ad Hoc
Committee of Non-US
Customers of FTX.com: David A. Wender, Esquire
EVERSHEDS SUTHERLAND (US), LLP
999 Peachtree Street, NE
Suite 2300
Atlanta, Georgia 30309

19 (APPEARANCES CONTINUED)

20 | Audio Operator: Jermaine Cooper, ECRO

21 Transcription Company: Reliable
The Nemours Building
22 1007 N. Orange Street, Suite 110
Wilmington, Delaware 19801
23 Telephone: (302) 654-8080
Email: gmatthews@reliable-co.com

25 Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 APPEARANCES (CONTINUED) :

2 For the Ad Hoc
3 Committee of Customers
4 and Creditors of FTX
5 Trading Ltd., et al.: Jeffrey S. Sabin, Esquire
VENABLE, LLP
151 West 42nd Street
New York, New York 10036

6 For the Official
7 Committee of
8 Unsecured Creditors: Kenneth Pasquale, Esquire
Isaac Sasson, Esquire
PAUL HASTINGS, LLP
200 Park Avenue
9 New York, New York 10166

10 For the Media
11 Intervenors: KatieLynn B. Townsend, Esquire
REPORTERS COMMITTEE FOR FREEDOM OF
THE PRESS
12 1156 15th Street, NW
Suite 1020
13 Washington, DC 20005

14 For the Joint
15 Provisional Liquidators
of Emergent Fidelity
16 Technologies, Ltd.: Jason N. Zakia, Esquire
WHITE & CASE, LLP
17 111 South Wacker Drive
Suite 5100
Chicago, Illinois 60606

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1 (Proceedings commence at 9:30 a.m.)

2 THE COURT: Thank you. Please be seated.

3 MR. LANDIS: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. LANDIS: And may it please the Court, Adam
6 Landis from Landis, Rath & Cobb on behalf of FTX Trading
7 Limited and its affiliated debtors.

8 Your Honor, we're back on the agenda to finish up
9 what we started yesterday in connection with Numbers 7 and 9.

10 I can report to you, Your Honor, that the parties,
11 last night, did have conversations with respect to the JLPs'
12 lift-stay or request that the stay doesn't apply. There has
13 been no resolution or narrowing of issues sufficient for you
14 not to rule, so the parties would request that you go ahead
15 and rule.

16 We don't know if you'd like to go ahead with
17 Items 7 and 9 first, or if Your Honor --

18 THE COURT: Yes.

19 MR. LANDIS: -- would like to.

20 THE COURT: Let's finish up the agenda and then
21 we'll come back to that.

22 MR. LANDIS: Okay. Fantastic. So then we can
23 resume where we were with the sealing motion.

24 THE COURT: Okay.

25 (Participants confer)

1 MR. SASSON: Good morning, Your Honor.

2 THE COURT: Good morning.

3 MR. SASSON: Isaac Sasson for the Official
4 Committee of Unsecured Creditors on the sealing motion.

5 Your Honor, I think where we left yesterday we
6 were going to call our second witness this morning, Mr.
7 Jeremy Sheridan. So, with your permission, we'd like to do
8 that.

9 THE COURT: Okay. Mr. Sheridan, come forward.
10 Please take the stand and remain standing for the oath.

11 THE ECRO: Please raise your right hand. Please
12 state your first name and spell your last name for the court
13 record, please.

14 THE WITNESS: My name is Jeremy Sheridan, last
15 name S-h-e-r-I-d-a-n.

16 JEREMY SHERIDAN, WITNESS FOR THE COMMITTEE, AFFIRMED

17 THE ECRO: You may be seated.

18 Your Honor.

19 MR. SASSON: May --

20 THE COURT: You may proceed.

21 MR. SASSON: Thank you, Your Honor.

22 As a preview, Mr. Sheridan filed a declaration in
23 support of the sealing motion at Docket Number 1325. We'd
24 like to admit that declaration as his direct testimony and
25 supplement it with a brief direct, as well, this morning. My

1 understanding is there are no objections, though the parties
2 reserve the right to cross Mr. Sheridan.

3 THE COURT: Okay. Is there any objection to the
4 entry of the declaration?

5 MS. SARKESSIAN: Your Honor, I do not object to
6 the procedure of introducing the declaration, but there are
7 two portions of it that I do have an objection to, based on
8 hearsay.

9 THE COURT: Okay.

10 MS. SARKESSIAN: If I may approach?

11 THE COURT: Yep.

12 MS. SARKESSIAN: I mean approach --

13 THE COURT: Let me --

14 MS. SARKESSIAN: -- the podium.

15 THE COURT: -- hear the --

16 MR. LANDIS: Yep.

17 THE COURT: Yes, the podium.

18 MS. SARKESSIAN: Thank you, Your Honor. For the
19 record, Juliet Sarkessian on behalf of the U.S. Trustee.

20 So, in Paragraph 18 of Mr. Sheridan's declaration,
21 he has a discussion of what happened in the Celsius case,
22 when then references certain documents that were filed. We
23 do not object to the Celsius documents that were filed on the
24 docket being admitted, but we -- I do object to this witness'
25 testifying about the contents because the contents speak to

1 them -- for themselves and I don't believe this gentleman has
2 any involvement with personal knowledge of the Celsius case.

3 THE COURT: Which joint exhibit is the
4 declaration?

5 MR. SASSON: Your Honor, it's not a joint exhibit.
6 It's exhibit ...

7 (Pause)

8 MR. SASSON: It's Exhibit I or exhibit -- it's at
9 Docket Number 1570.

10 THE COURT: Okay. I'm going to need a copy
11 because I don't have it in front of me.

12 MR. SASSON: Okay. May I approach?

13 THE COURT: Yes.

14 (Participants confer)

15 THE COURT: And which paragraph are you on now,
16 Ms. Sarkessian?

17 MS. SARKESSIAN: Paragraph 18, Your Honor.

18 (Participants confer)

19 MR. SASSON: Oh, it's Paragraph 18 of Tab 1,
20 exhibits, Tab 1.

21 (Pause)

22 THE COURT: Okay. And I'm sorry. State your
23 objection. What's the basis for the objection?

24 MS. SARKESSIAN: My objection is, while we do not
25 object to the actual court filings in Celsius on this issue

1 coming in, I do object to this gentleman's testimony about
2 the contents, which speak to themselves. And I also don't
3 believe Mr. Sheridan has any personal knowledge about what
4 happened in Celsius. But if I'm wrong about that, I can be
5 corrected.

6 THE COURT: Okay.

7 MR. SASSON: Your Honor, Mr. Sheridan is
8 testifying in his expert capacity as to the general knowledge
9 of what happened in the Celsius case. He's allowed to rely
10 on the fact that it occurred and he's drawn suppositions from
11 that fact.

12 THE COURT: I agree. The objection is overruled.

13 MS. SARKESSIAN: The next one, Your Honor, relates
14 to Paragraph 21 of Mr. Sheridan's declaration. And this
15 relates to the first two sentences, which, again, appear to
16 be statements that are based on newspaper reports.

17 Now, to the extent that it's based on his personal
18 experience -- and the last piece of the paragraph talks about
19 his experience and I do not object to that. But the first
20 two sentences appear to be testimony based on what is in
21 articles, newspaper articles, and we object to that as
22 hearsay.

23 THE COURT: Okay. Well, again, I think he's
24 relying on that as an expert witness to inform his opinion,
25 so I'll overrule the objection.

1 MS. SARKESSIAN: Thank you, Your Honor.

2 MR. SASSON: And --

3 THE COURT: So the declaration is admitted.

4 (Sheridan Declaration received in evidence)

5 MR. SASSON: Thank you, Your Honor.

6 And just for housekeeping purposes, in terms of
7 the exhibits to the declaration, we've spoken with counsel,
8 and we're only seeking at this point to admit:

9 Exhibit A, which is Mr. Sheridan's CV;

10 Exhibit I, which are the Celsius pleadings;

11 And Exhibit J, the Celsius transcript.

12 The rest of the exhibits are just referenced to
13 aid the reader in Mr. Sheridan's declaration.

14 THE COURT: Okay.

15 (Sheridan Declaration Exhibits A, I, and J received in
16 evidence)

17 MS. TOWNSEND: I just want to make it express --

18 THE COURT: You have to go to the microphone,
19 please.

20 MS. TOWNSEND: Thank you, Your Honor. Katie
21 Townsend on behalf of the media intervenors.

22 I just wanted to make it express that we, of
23 course, reserve the right to rely on any of the exhibits that
24 are relied by Mr. Sheridan and are attached to the
25 declaration for impeachment purposes.

1 THE COURT: Of course, yep.

2 MR. SUMMERS: Thanks.

3 MR. SASSON: Your Honor, and with that, may I
4 approach and hand Mr. Sheridan a copy of the declaration --

5 THE COURT: Yes.

6 MR. SASSON: -- and exhibits?

7 THE WITNESS: Thanks.

8 DIRECT EXAMINATION

9 BY MR. SASSON:

10 Q Good morning, Mr. Sheridan.

11 A Good morning, sir.

12 Q Mr. Sheridan, can you please describe briefly your
13 educational background?

14 A My education, I have a Bachelor's Degree from the
15 University of Arizona in Criminal Justice, as well as a
16 Master's Degree from the University of Arizona in Public
17 Administration, with a criminal justice emphasis.

18 Q And do you have any specialty certifications?

19 A Yes, sir. As it relates to this matter, I am chain
20 analysis reactor certified, which is the analytical tool for
21 blockchain analysis, developed by CHAINALYSIS.

22 I have expert certifications from the Blockchain
23 Council, which are cryptocurrency auditor, cryptocurrency
24 expert, and blockchain expert.

25 I have a certificate from Carnegie Mellon University

1 for chief information security officer.

2 I have a certificate from Columbia Business School of
3 Executive Education, blockchain for business.

4 I am a certified information security manager through
5 the Information Systems Audit and Control Association.

6 I also have two certificates from the Global
7 Information Assurance Corporation in information security
8 governance and leadership.

9 Q And I think you mentioned that these relate to this
10 matter. So all of these -- all of these certificates
11 specifically relate to what sort of type of experience?

12 A Digital assets, blockchain, cryptocurrency, information
13 security, and cyber security.

14 Q All right. And could you just please summarize your
15 employment history since you graduated?

16 A Since I graduated from college, I spent a year as a
17 juvenile corrections officer, 4 years as a police officer, 24
18 years with the United States Secret Service, 1 years as the
19 Vice President of Regulatory Affairs for a private digital
20 asset infrastructure company, and the past 3 months with FTI
21 Consulting.

22 Q And for everyone's benefit, what relation does the
23 Secret Service have to cyber currency -- to cryptocurrency or
24 cybercrime or just criminal investigations generally?

25 A The Secret Service has statutory authorization to

1 conduct investigations into financial crimes of all types.

2 As a result of that legal authority, as well as being
3 one of two agencies listed in the -- with specific statutory
4 authority in the Computer Fraud and Abuse Act, us and the
5 FBI -- the Secret Service and the FBI, we are legally
6 empowered to investigate financial crimes, ranging from
7 traditional financial crimes to digital financial crimes.

8 Q And at the Secret Service, did you work in that
9 capacity, in investigation of financial crimes?

10 A Yes, sir. Throughout my 24 career -- twenty-four-year
11 career, in a variety of capacities.

12 Q And so do you have experience with investigating cyber-
13 based crimes?

14 A Yes, sir.

15 Q How long have you investigated cyber-based crimes?

16 A During my 24 years with the Secret Service, I spent
17 times in an investigative role, in total it would be 7 years
18 as a non-supervisory agent and then another 7 years as a
19 supervisory agent.

20 Q And as part of your investigation of cyber-based
21 crimes, do you have any experience investigating crimes that
22 relate to block -- the blockchain or cryptocurrency
23 generally?

24 A Yes, sir.

25 Q And how much experience do you have there?

1 A Blockchain and digital assets would be approximately
2 four years.

3 Q And have you ever testified before?

4 A I have testified as an expert witness in front of the
5 United States Congress on three separate occasions, twice in
6 front of the House of Representatives and once in front of
7 the U.S. Senate.

8 Q And what was the nature of that testimony?

9 A Those were related to blockchain digital asset and
10 cryptocurrency investigations.

11 Q Thank you.

12 And do you possess any security clearances?

13 A I have a top secret SCI security clearance.

14 Q And what institution granted you that clearance?

15 A Through the United States Government, I believe it's
16 the Department of Justice.

17 Q All right. And I think -- I believe you had mentioned
18 this earlier. But where are you currently employed?

19 A With FTI Consulting.

20 Q And what is your title at FTI?

21 A I'm a Managing Director.

22 Q And how long have you held that title?

23 A For three months.

24 Q And what are your day-to-day job responsibilities as a
25 managing director?

1 A So I lead our investigations function within FTI. And
2 in that capacity, I lead teams of blockchain and digital
3 asset investigators, forensic analysts, consultants who
4 engage in a variety of investigative capacities, everything
5 from theft, fraud, scam, market valuation, track and trace,
6 and -- and other functions related to digital assets.

7 Q All right. And in your capacity as advisor in FTI,
8 have you become familiar with the facts of this case?

9 A Yes, sir.

10 Q Okay. So just moving on more generally.

11 Based on your experience investigating crimes and
12 cybercrimes, do bad actors typically target holders of
13 cryptocurrency?

14 A Yes, sir.

15 Q Why is that?

16 A I think, largely, it's due to the nature of the asset
17 itself. Cryptocurrency is extremely valuable. It is global
18 and near instantaneous in its transfer. It is pseudo-
19 anonymous. And the transactions are irreversible. So, as a
20 result, it provides opportunity for criminal actors as both
21 means and method to execute criminal schemes.

22 Q And do you have any direct experience with bad actors
23 targeting holders of cryptocurrency?

24 A Yes, sir.

25 Q And without going through everything that was said in

1 your declaration, can you just briefly summarize some of that
2 experience?

3 A Yes. So, in both my investigative role with the United
4 States Secret Service, in my private sector capacity in
5 regulatory affairs, specifically our customer base, as well
6 as in my current role with FTI in investigative functions, I
7 have led and been part of investigations that relate to the
8 types of schemes I've outlined in my declaration:

9 Business email compromises that target cryptocurrency
10 holders by means of email communications purporting to be a
11 legitimate business communication;

12 Pig butchering, where specific individuals are targeted
13 based on their name and fooled into investing cryptocurrency
14 in incremental ways, in order to increase the amount of funds
15 that will be taken from that individual;

16 Romance scams where individuals are targeted and lured
17 into sending cryptocurrency to criminal actors;

18 Phishing attempts, where, you know, fraudulent emails,
19 texts, or other communications are used to deliver malware or
20 malicious payloads to user networks for the purpose of
21 unauthorized access and account or cryptocurrency credential
22 harvesting;

23 A variety of different criminal schemes that -- that
24 I've been involved in.

25 Q All right. Just to focus on one, pig butchering, for

1 example. Would it be easier or harder to target someone if
2 you were -- wanted to facilitate pig butchering if they were
3 already a holder of cryptocurrency?

4 A It's much easier if they are already a holder. By
5 nature of that scheme, if you're involved with cryptocurrency
6 as the method of profit, if someone doesn't have a
7 cryptocurrency account or is unfamiliar with the operations
8 of cryptocurrency transactions, you have to instruct them on
9 that, guide them through setting up the account, explain the
10 basics of the technology to them and so forth.

11 Whereas, if that individual is already active in the
12 space, if -- that barrier is removed and you can get right to
13 the true elements of the -- the crime, which are getting them
14 to deposit assets into fraudulent accounts.

15 Q Got it.

16 And are crimes involving blockchain and/or
17 cryptocurrency different than those involving traditional
18 fiat currency?

19 A Yes, they are different.

20 Q And how so?

21 A Well, one, as the reasons I listed in one of your
22 previous questions, the nature of the technology itself is --
23 is the primary reason.

24 But there is also an element of distance between the
25 criminal actors and the targets in these cases. Many of the

1 criminal actors, the majority of the criminal actors we
2 encounter are, in this case -- in these cases, organized
3 groups, highly competent, often foreign actors that take
4 advantage of their targets who may not be as sophisticated in
5 the technology and use that to their advantage to prevent
6 detection or identification or judicial consequence or -- or
7 retrieval of funds.

8 Q And certain objectors have argued that cryptocurrency
9 users are, in fact, more sophisticated and so are less likely
10 to fall prey to cybercrimes. Do you agree with that
11 statement?

12 A I do not agree with that characterization. I think, by
13 the very nature of the data shown and the amount, both in
14 valuation and volume of cryptocurrency fraud scams and crimes
15 that continue to occur, it demonstrates a lack of
16 sophistication a high -- high volume of users.

17 I also think that there is a mantra in digital asset
18 investing, cryptocurrency investing, of not your keys, not
19 your crypto, which is meant to say that, if you don't possess
20 your private keys singularly in some type of cold storage
21 or -- or non-online type of -- of mechanisms or storage
22 device, then you don't truly have access to your crypto.

23 And what we see most consistently is that the crimes
24 that are occurring are people who surrender their keys to an
25 exchange or other platform or through a lot of the schemes

1 that I've identified. They surrender their keys by -- by
2 being fooled into doing so or by some type of investment
3 approach by them because they're focused on the return and,
4 you know, promises of -- of quick profit from -- from their
5 investments, which is not truly what the technology and the
6 assets are -- how they're intended to function, in terms of a
7 security protocol and a secure mechanism of possessing
8 private keys.

9 Q And in your opinion, FTX users specifically, would they
10 be an easier or a harder target for cyber criminals?

11 A My assessment is they would be an easier target. This
12 population of users was specifically marketed to as an easier
13 and less technical customer, which it appears attracted a
14 very high volume of those individuals, who, in fact,
15 surrender their keys, as I described earlier, to the exchange
16 and did not truly have the full security control of their
17 accounts.

18 I think, by nature of their focus solely on the return
19 on the investment, as opposed to the security of the
20 investment, these individuals do not demonstrate a high level
21 of technical awareness or security focus related to their
22 assets.

23 Q And when you see "these individuals," are you talking
24 about all the individuals on FTX?

25 A I wouldn't be able to speak to all individuals, but

1 as -- the majority of the population certainly appears to
2 have willfully surrendered their keys and their access to
3 their accounts in the investment approach.

4 Q Okay. Switching gears for a second.

5 In your experience, would simply having an individual's
6 name, but not their home address or email address, be enough
7 for a bad actor to identify them and perpetuate a cybercrime?

8 A Yes, sir. I think that is the entry into that ability.

9 Q Why is that?

10 A I don't think, in today's day and age, people exist
11 solely as names. Names are connected to a wealth of
12 information that is available in publicly available places
13 that is provided voluntarily or just by recordkeeping
14 mechanisms of these individuals.

15 And I also think criminal actors in the cyber space
16 related to digital asset crimes are very well versed in non-
17 surface web methodologies that provide a host of information
18 about individuals.

19 And what I mean by that is, you know, the surface web
20 is 4 percent of what you and I see in our daily lives of
21 Google and other publicly available search engines. The
22 other 96 percent is deep web or dark web marketplaces that
23 traffic in illicit -- you know, illicitly obtained
24 information about individuals that can be, as a fee-for-
25 service, used to link individual names to actual people,

1 provided -- using information that is already available on --
2 in these dark web marketplaces.

3 Q Let's say, for example, you had my name, but nothing
4 else. How would you go about correlating other personally
5 identifiable information?

6 A So I would do it in those two broad lines of effort:

7 In the publicly available public records that are --
8 list your name, use that corroborate and correlate to any
9 online profile or persona that you have created. These are
10 the more voluntary ways that you've done, through your social
11 media profile, everything from Facebook to LinkedIn to
12 Instagram.

13 I would then delve into the dark web options that have
14 these fee-for-service trafficking in personal information and
15 start to build my portfolio of you with those methods and
16 start to identify you as an individual beyond just your name.

17 Q And would that be difficult to do?

18 A Not in my opinion, sir.

19 Q Why not?

20 A Because of the volume of information that is out there
21 in publicly available records, in the information that is
22 voluntarily provided by most everyday people, as well as the
23 volume of information that has been released on the dark web
24 through the -- the number of large volume hacks that have
25 occurred, everything from the Target to LinkedIn to Yahoo to

1 Marriott. There is a very high volume of personally
2 identifiable information for purchase on the dark web that
3 can be used to connect individuals from their public online
4 digital fingerprint.

5 Q Now, to add to that hypothetical, let's say you also
6 knew that I was a cryptocurrency user. Would that make it
7 easier or harder to find out other personally identifiable
8 information about me?

9 A Yeah. Any piece of information helps to make that
10 picture clearer, especially financial information, especially
11 cryptocurrency information because it is publicly available
12 on the blockchain and you can research transactions using
13 publicly available and free tracking methods.

14 So, if I know that you're involved in cryptocurrency, I
15 can start to research you through different exchanges,
16 different communications you've put out, different purchases,
17 understand what your spending profiles are, understand what
18 type of tokens you utilize, see what you're posting online
19 about your activities related to cryptocurrency, and then
20 start to actually search on the blockchain for specific
21 transactions that match up with time lines, amounts,
22 transactions that you may be communicating.

23 Q And just to add to the hypothetical, let's say you knew
24 that, not only that I was a cryptocurrency user, but I was an
25 FTX user and the coins I had held in my account as of the

1 petition date. Would that make it easier or harder?

2 A Yeah, any piece of information makes it easier. So
3 knowing what exchanges you're involved in, the types of
4 coins, the dates you're transacting, all of those add a level
5 of specificity that will help to verify you are, in fact, the
6 person that I am researching in these other venues.

7 Q All right. Are you generally familiar with the Celsius
8 Chapter 11 cases?

9 A Yes, sir.

10 Q And based on what you know about the case, can you
11 describe what happened to the Celsius retail customers when
12 the individual names were disclosed?

13 A Yes, sir. Those names were compiled and placed into a
14 interactive, searchable Excel spreadsheet that was put online
15 through Celsiusnetworth.com. Once that spreadsheet got --
16 was -- was put online, anyone was able to access it, identify
17 the individuals, identify the amounts associated with them,
18 and conduct research from that spreadsheet.

19 Q And did anything else occur in Celsius with respect to
20 personally identifiable information?

21 A I know there were multiple reported incidents of
22 phishing, business email compromise, other types of criminal
23 schemes that targeted the individuals listed in -- in that
24 spreadsheet or in those names that were released.

25 Q And based on your experience, do you believe that

1 similar attempts would occur here if the individual customer
2 names were publicly disclosed?

3 A Yes, sir.

4 Q And do you perceive a higher or lower risk of attacks
5 in this case than the Celsius case?

6 A I think there's a much higher risk related to this case
7 because of the prominence of the case, the notoriety of the
8 case, and also where the industry is at this particular time
9 in the overall market.

10 Backed by -- you know, I think one that's very
11 different about the cryptocurrency environment is the crypto
12 Twitter nature of how information is communicated in realtime,
13 instantaneously, and with a focus and intensity that doesn't
14 exist in other markets.

15 Q All right. Putting aside the cryptocurrency bankruptcy
16 cases, just generally, between a cryptocurrency bankruptcy
17 case and a regular Chapter 11 case or even this case and a
18 regular Chapter 11 case, do you perceive a higher or lower
19 risk to cyber schemes and attacks on personally identifiable
20 information?

21 A Again, much higher in this case by nature of -- of the
22 crypto Twitter universe, as I explained it. There -- there
23 is not a bankruptcy twitter club or -- or population, if you
24 will. There is not a Best Buy Twitter handle. There --
25 there is crypto Twitter, and that feeds information and

1 really accelerates the way that different approaches and
2 perspectives are shared.

3 And I think there's also a much higher visibility in
4 this case than other bankruptcy proceedings.

5 Q All right. And last couple of questions.

6 In your experience, will disclosure of customer names
7 in these bankruptcy cases subject customers to significant
8 harm?

9 A Yes, sir.

10 Q And just last question.

11 Are -- according to some objectors, crypto users are
12 just like anyone else and, to quote:

13 "Sometimes scammers target them and that is just a
14 fact of life."

15 Do you agree that subjecting yourself to constant scams
16 and potential harm is just something that everyone needs to
17 live with?

18 A No, not at all, sir. And I think that -- that type of
19 casual and dismissive approach to this being just something
20 that happens is -- is not reflective of the true harm it
21 causes.

22 And particularly in this case, for the reasons
23 outlined, cryptocurrency itself, the high profile nature of
24 FTX, the crypto Twitter highlighting and -- and exacerbation
25 of the events here, as well as the way the industry does not

1 have similar protections, backstops, centralized regulatory
2 structures or a really level of protection that -- that
3 traditional finance or -- or other schemes may have makes
4 this a much more significant risk of harm to those involved.

5 Q Thank you, Mr. Sheridan.

6 MR. SASSON: Your Honor, no further questions at
7 this time.

8 THE COURT: Okay. Thank you.

9 Does anyone else wish to ask questions in support?

10 MR. WENDER: Yes, Your Honor.

11 THE COURT: Go ahead.

12 MR. WENDER: Good morning, Your Honor. For the
13 record, David Wender with Eversheds Sutherland on behalf of
14 the Ad Hoc Committee of Non U.S. Customers.

15 CROSS-EXAMINATION

16 BY MR. WENDER:

17 Q Good morning, Mr. Sheridan.

18 A Good morning, sir.

19 Q Just -- hopefully just a few questions.

20 The good portion of your declaration and testimony
21 today focused on the potential harm to individuals. That
22 same harm is also subjected to on corporations and business
23 entities, correct?

24 A Possibly, sir. Yes, sir.

25 Q And in fact, in your declaration, you talk about that

1 you have experience on ways that businesses are also impacted
2 by this. Is that correct?

3 A Yes, sir.

4 Q In fact, Exhibit P to your declaration -- and if you
5 need to look at it, although I'm just going to -- it really
6 Paragraph 23 -- talks about the biggest data breaches of the
7 21st Century. Those were all companies, right?

8 A That's correct, sir.

9 Q And Exhibit Q, where it talked about the biggest crypto
10 heists, those are also companies, not individuals, right?

11 A The crypto heist one I don't have off memory. Can you
12 refer to --

13 Q It's Exhibit Q. And I -- and it -- and it's not --
14 I -- just looking at it quickly, and I can even highlight it,
15 as well. It said 17 biggest crypto heists of all time, and
16 it's Exhibit Q to your declaration. And it lists MT Gox or
17 Gox -- I never pronounce that correctly. That's an entity,
18 right?

19 A (No verbal response.)

20 Q And if I went through all of them, I don't see an
21 individual's name there.

22 MR. SASSON: It's Tab 18.

23 MR. WENDER: Huh?

24 MR. SASSON: Tab 18.

25 BY MR. WENDER:

1 Q Tab 18. Sorry.

2 A Okay.

3 Q I apologize. I had it tabbed by letter.

4 A The -- the only distinction I would make, sir, is that
5 I think, while the data breaches are companies, the crypto
6 heists are of wallets within those companies that are
7 associated with individuals. And that may be just parse of
8 words, but --

9 Q Yeah.

10 A -- they --

11 Q But --

12 A -- they were held in centralized locations of
13 exchanges, so --

14 Q Yeah. But those affected entities, but then also, in
15 turn, potentially their customers, there are individuals and
16 other entities in subparts, right?

17 A Yes, sir.

18 Q Because, when hackers attack a business entity, they go
19 after the business information at times, correct?

20 A Yes, sir.

21 Q And then also, for example, customer lists of their own
22 people, employees, and the like. So individual information
23 is also, at times, attacked by hackers when they go after
24 corporate entities.

25 A Yes, sir.

1 Q Fair? Great.

2 And then -- and you talked about here, where it's the
3 involvement of individuals and their names were such that
4 people could identify them and be able to target them more
5 specifically.

6 Now, if a customer had to list both their name, their
7 address, and their holdings, that would make it an easier
8 target, right?

9 A Significantly, yes.

10 Q Okay. Thank you for that.

11 Now -- and so -- and you talked about business email
12 compromise earlier in part of your declaration. So, in a
13 business email compromise, are they more effective if someone
14 first obtains access to a corporate network? Does that
15 question make sense?

16 A It makes sense. I would say -- I wouldn't classify the
17 business email compromise as more effective. I would
18 classify account spoofing as more effective. It's -- it's a
19 different scheme.

20 But if the point of your question is the business
21 nature, if you obtain access to, as I've seen in cases I've
22 investigated, the domain name server of the business, you can
23 then spoof that domain and redirect potential users of that
24 domain to fraudulent locations.

25 Q First, correct for -- thank you for correcting my

1 question and making it more expert. I'm not an expert, but
2 thank you for that.

3 But then it is easier in that situation to, once you
4 spoof -- to use your term, hopefully correctly -- then you
5 can get access to individual information and their assets in
6 furtherance of their hacking or schemes. Is that correct?

7 That happens at times?

8 A Yes, sir.

9 Q Okay. Thank you.

10 MR. WENDER: Nothing further.

11 THE WITNESS: Yes, sir.

12 THE COURT: Anyone else in support?

13 (No verbal response)

14 THE COURT: Okay. Cross.

15 (Pause)

16 MS. SARKESSIAN: Good morning, Your Honor. This
17 is water, not coffee. I just --

18 THE COURT: That's fine.

19 MS. SARKESSIAN: I don't want you to be worried
20 I'm like spilling things.

21 THE COURT: Coffee and water both spill, but
22 that's okay.

23 (Laughter)

24 MS. SARKESSIAN: Well, all right. It does less
25 harm, I suppose, if it's just water.

1 Okay. For the record again, Juliet Sarkessian on
2 behalf of the U.S. Trustee.

3 Your Honor, before I commence my cross, I think --
4 and maybe I missed this. But it's my understanding that Mr.
5 Sheridan is being offered as an expert witness. I'm just not
6 sure that that was distinctly, expressly stated, and I just
7 want the record to be clear on that if that is the case.

8 (Participants confer)

9 MR. SASSON: Your Honor, it doesn't need to be
10 stated, but yes, he is.

11 THE COURT: Okay. Well, normal procedure would
12 be, if you had an expert, you qualify them, I say that
13 they're an expert witness, and then you get to elicit the
14 testimony from them. You didn't follow that, but that's
15 fine.

16 I don't have any issues. I think his
17 qualifications are absolutely clear that he's an expert in
18 this field, so I have no problem with recognizing him as an
19 expert in the field.

20 MR. SASSON: Thank you, Your Honor.

21 MS. SARKESSIAN: Yes, Your Honor. I'm not
22 objecting to him being an expert. I just wanted the record
23 to be clear that that was how he was being offered.

24 THE COURT: Yeah.

25 MS. SARKESSIAN: Thank you.

1 CROSS-EXAMINATION

2 BY MS. SARKESSIAN:

3 Q Okay. Sir, I have -- let me start -- I have a few --
4 first of all, good morning.

5 A Good morning, ma'am.

6 Q I have a few questions. I'm going to start with your
7 declaration. And really, this is for -- I'm asking questions
8 so I can better understand, have better clarity.9 The first thing -- and I'm not sure how significant
10 this is -- but you talk about, in Paragraph 4, you say at the
11 last sentence:12 "I possess a Top Secret/Sensitive Compartmented
13 Information security clearance."14 And my question is: Is that -- you're no longer
15 working for the Government, correct?

16 A I'm sorry, ma'am?

17 Q You're no longer an employee of the Government. Is
18 that correct?

19 A That's correct.

20 Q So do you still have the Top Secret/Sensitive
21 Compartmented Information security clearance?

22 A Yes, ma'am.

23 Q And how long will that last for?

24 A Another three and a half years. It's -- you go through
25 five-year periodic updates.

1 Q Uh-huh. Which I am familiar with, I --

2 A Yeah.

3 Q -- since I'm a government employee.

4 A Yes, ma'am.

5 Q Okay.

6 A Mine was shortly before I retired, and so just based on
7 the time line.

8 Q Okay. Thank you.

9 (Pause)

10 Q Okay. With respect to -- if you could maybe turn to
11 Paragraph 10 of your declaration, please.

12 A Yes, ma'am.

13 Q Okay. So the first sentence says:

14 " [The] odds of success for identify and asset
15 theft crimes are increased even further if they are committed
16 against vulnerable persons, such as the debtors' customers in
17 these Chapter 11 cases" --

18 Do you see that?

19 A Yes, ma'am..

20 Q So my question is: How about individuals who are not
21 customers of the debtors, but are other types of creditors in
22 these cases? Would knowing that such an individual was a
23 creditor of FTX, not a customer, but it's some other type of
24 creditor, would that make it more likely that they could be a
25 victim of identity theft than any other person?

1 A If I knew someone was a creditor in some other
2 proceeding, I would need to know the full circumstances.

3 The line of thought behind that statement in
4 Paragraph 10 is based on my knowledge of FTX, the amounts
5 involved, the steep and contradictory way in which that
6 exchange went from the most prominently secure and qualified
7 custodian to a -- one that was accused of, you know,
8 committing acts of fraud with customer funds.

9 I think, when an individual invests in something that
10 they are very are very confident in, that turns out to be the
11 exact opposite of that set of circumstances and there is high
12 valuation involved, that creates an opportunity and a
13 vulnerability that could be exploited.

14 Q All right.

15 A So I would need to know the full circumstances of the
16 other situations you're asking me about.

17 Q Right. Because what you just testified to would apply
18 just to actual customers of FTX, correct?

19 A The way I have it described, yes.

20 (Pause)

21 Q Okay. Would you please turn to Paragraph 15 of your
22 declaration, please, which deals with the term "pig
23 butchering"?

24 A Yes, ma'am.

25 Q So -- and this question may relate to some other

1 provisions in your declaration, as well.

2 But do you have an under -- I assume you know what a
3 "cold wallet" is, correct?

4 A Yes, ma'am..

5 Q Okay. Could you explain what that is?

6 A It is a wallet that is not connected to online
7 functionality. So, as I referenced earlier, you can store
8 your wallet information and your private key, public key,
9 seed phrase, and wallet addresses in a medium, usually a USB-
10 type device, that is not connected to online internet.

11 Q Do you have an understanding of whether, in these
12 cases, the debtors' current management has transferred all
13 customer accounts into cold wallets? I may not be saying it
14 exactly correctly. But do you have an understanding about
15 that?

16 A I do not know what storage methods are being used by
17 FTX. Is that what you're asking me?

18 Q Yes.

19 A I do not know how they are storing customer funds.

20 Q If customer funds are being -- in any situation, are
21 being stored in a cold wallet, does that make it more
22 difficult for a bad actor to access that account, even if
23 they have the person's name?

24 A To access the funds in the wallet?

25 Q Yeah. Their funds --

1 A Cold --

2 Q -- in the account.

3 A Yes, ma'am. Cold wallet storage is a much more secure
4 way to store digital assets.

5 Q Okay. So, if a bad actor, even if they knew the name
6 of a customer, they would not be able to break into a cold
7 wallet to steal money out of the customer account. Is that
8 correct?

9 A I wouldn't characterize it that way because many of the
10 cryptocurrency frauds involve manipulation of individuals.
11 And once you know that individual and can engage with them,
12 you can manipulate them into accessing their cold wallet,
13 putting it in a warm or hot state online, and then harvest
14 their credentials, conduct, you know, these type of schemes
15 by having them bring their cold wallet into a hot or warm
16 state.

17 Q Okay. Are you talking -- when you're talking about
18 individuals that the wrongdoer is contacting, do you mean
19 somebody who's an actual customer, that they're getting that
20 customer -- they're manipulating the customer to get access
21 to the cold wallet?

22 A Yes, in a general -- in a general sense.

23 If the customer doesn't have access and can't get their
24 cold wallet --

25 Q That manipulation would not work, correct?

1 A Yes. If you -- if the customer can't get their funds,
2 you can't manipulate them into using their funds -- or
3 submitting their funds for criminal purposes. That's
4 correct.

5 Q Thank you.

6 Now you had -- and I'm jumping now for a minute to your
7 live testimony today.

8 You testified -- I think you testified that FTX
9 customers, prior to the bankruptcy, had turned over keys to
10 their account to wrongdoers. Did I understand that
11 correctly?

12 A No, ma'am.

13 Q Okay. All right. So you don't have any knowledge as
14 to, prior to the bankruptcy, whether any FTX customers were
15 the victim of some, you know, wrongdoing, where they were
16 manipulated into turning over their keys or any other way to
17 access their accounts?

18 A I do not have information about specific FTX customers.

19 (Pause)

20 Q Okay. And if we could please turn to Paragraph 20 of
21 your declaration, please. And it concerns SIM swapping.

22 A Yes, ma'am.

23 Q And then, if you could go down to -- well, I won't
24 focus you on any particular sentence.

25 But this -- SIM swapping has to do with cell phones,

1 correct?

2 A Yes, ma'am.

3 Q Okay.

4 A "SIM swapping" it's --

5 Q SIM --

6 A -- referred --

7 Q -- swapping.

8 A Yes, ma'am.

9 Q Okay. Does this method work if the individual who has
10 an account, again, does not have access to it because it's in
11 a cold wallet?

12 A So I think the distinction I would make is that the
13 specific funds in that cold wallet, the answer would be the
14 same as your previous question, they would not be -- if the
15 target does not have access to those funds because they're in
16 a cold wallet that the target cannot obtain. However, you
17 know, there are other criminal schemes that could be executed
18 beyond those specific funds if that individual had assets in
19 other wallets, other hot wallets, or other locations.

20 Q Paragraph 22, if you could please turn to paragraph 22
21 of your declaration.

22 A Yes, ma'am.

23 Q So the first sentence says, "Beyond the potential for
24 physical harm, emotional distress, cyber threats, kidnaping,
25 stalking, and bullying that could occur, malefactors could

1 likely determine the physical address of the debtors'
2 customer as a result of disclosure of individual customer
3 names." Do you see that?

4 A Yes, ma'am.

5 Q My question is, with respect to the physical address,
6 is it any easier to find a person's physical address knowing
7 that they happen to a customer of FTX, as opposed to getting
8 the physical address of any other person?

9 A I think that whatever the source of information is,
10 whether it's a customer of FTX or others, the description
11 related to this is the harm that would come because they're a
12 customer of FTX and this -- for ease of communicating the
13 idea, this crypto-Twitter idea about very public, vocal,
14 elevated, and heightened type of instant communication
15 surrounding cryptocurrency holders, cryptocurrency events,
16 especially events of this nature and magnitude.

17 Q Okay. So, just to be clear, the fact that somebody was
18 a customer of FTX, coupled with just their name, does not
19 make it easier for a wrongdoer to find their physical address
20 as opposed to any other individual who's not a customer of
21 FTX?

22 A I think, if you have the fact that they're a member
23 of -- or, excuse me, a customer of FTX, that's a piece of
24 information. If I simply have your name and no other
25 information versus having your name and you're a customer of

1 FTX, coupled with the amount of your account transaction
2 volume with the type of token that you're engaging with in
3 FTX or utilizing as a customer, those pieces of -- every
4 piece of information is an asset in my investigation to
5 identify you.

6 So a customer of FTX, yes, that's a piece of
7 information that I now can use to research chat forums,
8 transactions on the block chain, other types of investigative
9 material related specifically to cryptocurrency that may be
10 of value to help me identify you, as opposed to just name and
11 no cryptocurrency engagement whatsoever.

12 Q Right, I understand what you're saying, but I don't
13 think you're actually -- I don't know that you've actually
14 answered my question. My question is very simple.

15 A Okay.

16 Q For somebody who's a wrongdoer, is it easier to find an
17 individual's physical address knowing that they're an FTX
18 customer than some other individual who's not an FTX
19 customer?

20 A Yes, ma'am.

21 Q It is easier to find their physical address just
22 knowing that they're an FTX customer?

23 A Yes, ma'am.

24 Q Explain to me how that is? Not other information, but
25 just their address, their physical address.

1 A And I'll try and explain a different way. I apologize
2 if in my previous answer I didn't. Knowing you an FTX -- so
3 I would not stop there with the name Jeremy Sheridan and FTX
4 customer. If my investigation stopped there, I would submit
5 that your question is, yes, that wouldn't help me at all, but
6 knowing that you're an FTX customer, I know you're going to
7 be involved in cryptocurrency, I know you're going to have
8 involvement in other transactions related to cryptocurrency.
9 You may be involved in cryptocurrency chat forums, you may be
10 involved in other exchanges, you may be involved in crypto
11 Twitter, I will use that as an investigative lead to start to
12 build that profile of you because I know you're a customer of
13 FTX and you have engaged in cryptocurrency transactions, as
14 opposed to just the name Jeremy Sheridan, it gives me a piece
15 of investigative information that I will build upon. That's
16 the way criminals or as an investigator I identify you is by
17 taking those pieces of information and corroborating them to
18 other pieces of information to build you as a person.

19 Q But isn't one of the benefits of cryptocurrency is
20 supposed to be that it's anonymous and that you're not
21 revealing your address or even many times your email address
22 in doing these crypto transactions, isn't that correct?

23 A I think anonymity in cryptocurrency is a misconception.

24 Q Okay.

25 A It is pseudo-anonymous, but it is also publicly-

1 available, accessed, digital, cryptographic transactions that
2 occur in public, open space that anyone can access at any
3 time. So it is in many ways contrary to anonymity.

4 Q I understand. Now, I want to go to your -- the live
5 testimony this morning in response to Counsel for the Ad Hoc
6 Committee and he asked you some questions about harm to
7 corporations who are customers, but he also asked you -- if I
8 understand correctly, he was tying together a situation in
9 which a corporation is the FTX customer -- not the employees
10 of the corporation, but the corporation is an FTX customer,
11 and that that can result in some harm to the employees of
12 that company even if they are not themselves FTX customers.

13 Is that correct?

14 A I answered those questions based on customers of that
15 company, not employees of that company. Is that your
16 question?

17 Q Oh, customers of -- customers of a company that's
18 customers of FTX?

19 A If a company is a customer of FTX --

20 Q Then who is it that's going to be harmed other than the
21 customer of FTX?

22 A The downstream customers of that company.

23 Q Okay. And how is that?

24 A A company does not exist in a vacuum, in my opinion; it
25 is comprised of customers who engage in the business

1 operations of that company. So if a company is involved in
2 FTX and through -- I would have to know the circumstances of
3 their business operations, dealings, and connections, but if
4 I could identify individuals who are customers of that
5 company, I could then in similar ways to the individual
6 customer names start to build a profile of those customers
7 and execute similar criminal schemes of the customers of that
8 parent company.

9 Q So let's say you have two companies. One is company A,
10 they're a customer of FTX, and you have company B, who's not
11 a customer of FTX. Both A and B have their own customers.

12 A Yes, ma'am.

13 Q Knowing that company A is a customer of FTX, does that
14 make it any easier to figure out who company A's customers
15 are as opposed to company B's customers?

16 A My answer would be similar to your previous question
17 about individuals, it's another piece of investigative
18 information that possesses publicly-available block chain
19 information about financial transactions that I could
20 potentially use to identify individuals who are engaging in
21 those business activities.

22 Q When a company is engaging in transactions -- not
23 currently, but prior to bankruptcy was engaging in
24 transactions on the FTX format with cryptocurrency, how is
25 that providing any information about their customers?

1 A I would have to know the circumstances of it. In a
2 vacuum, if it's just the company name, it would take
3 additional investigative steps, but similar ways as I've
4 described before, if it's a company that is investing in
5 crypto assets that are being placed on FTX, and then I can
6 investigate that company and identify through open source
7 information or dark web information vulnerabilities in the
8 company, individuals posting about the company, individuals
9 communicating about their crypto transactions with the
10 company, there are possibilities and ways to identify
11 individuals who are engaged in those activities. It's
12 another layer of distance from an individual. And speaking
13 without true specifics about all of the details, it's hard to
14 be more concrete, but it is possible to build that type of
15 identification.

16 Q Isn't it also true it's possible to go -- again, take a
17 company that's not an FTX customer and go to their website,
18 find out things about them, do all of the things that you're
19 talking about on the dark web, and find out information about
20 their customers as well; right?

21 MR. WENDER: Objection, Your Honor. He's answered
22 this question two or three times now in different ways.

23 THE COURT: Overruled. He can answer again.

24 THE WITNESS: That is possible, yes.

25 MS. SARKESSIAN: And I believe those are all of my

1 questions of this witness. Thank you, Your Honor.

2 THE COURT: Thank you.

3 CROSS-EXAMINATION

4 BY MS. TOWNSEND:

5 Q Good morning, Mr. Sheridan. My name is Katie Townsend,
6 I'm one of the attorneys representing the news media
7 interveners, *The New York Times*, *The Wall Street Journal*, the
8 *Financial Times*, and Bloomberg, in this matter.

9 A Good morning, ma'am.

10 Q I'm going to do something similar to what
11 Ms. Sarkessian did, which is I'm going to start with your
12 declaration and then move to some questions from your live
13 testimony today.

14 You testified that you're the manager director at -- a
15 managing director, excuse me, at FTI Consulting. Is that the
16 financial adviser for the Official Committee of Unsecured
17 Creditors in this matter?

18 A FTI Consulting as a whole?

19 Q Yes.

20 A Yes.

21 Q To simplify things, by the way, if I use the phrase
22 official committee, you'll know I'm talking about the
23 Official Committee of Unsecured Creditors; correct?

24 A Yes, ma'am.

25 Q And if I use the word or the term individuals, you'll

1 know I'm referring to natural persons and not entities;
2 right?

3 A Yes, ma'am.

4 Q Do you know the identities of any individuals who are
5 members of the official committee?

6 A No, ma'am.

7 Q Do you know the identities of any individuals who are
8 among debtors' top 50 creditors?

9 A No, ma'am.

10 Q Do you know the identities of any individuals who are
11 customers of the debtors whose names have been redacted from
12 the filings in this case?

13 A No, ma'am.

14 Q You testified that by combining the name -- well, let
15 me do it this way. Do you have paragraph 9 of your
16 declaration in front of you?

17 (Pause)

18 A Yes, ma'am.

19 Q You testified -- in this paragraph, you state that by
20 combining the name of an individual with other publicly-
21 available sources, a malefactor will be able to harvest a
22 full biography of a person, what you refer to as a dossier.
23 That's true of anyone, isn't it, not just the creditor
24 customers of debtors in this case?

25 A Is it true that a criminal actor can create a dossier

1 of any individual they're trying to target?

2 Q Yes.

3 A Uh, I wouldn't say it's true of anyone. I think you
4 need corroborating information, which in today's day and age
5 is generally easy to find. I mean, is there someone who's
6 completely removed themselves from the ability to do that?

7 It's possible.

8 Q Is that because how much information is available about
9 a person from publicly-available sources varies by person?

10 A Yes, some people are easier to build that than others,
11 yes.

12 Q You don't know what, if any, steps any of the customers
13 of the debtors whose names have been redacted from the
14 filings in this case have taken to limit what information is
15 available about them from publicly-available sources; do you?

16 A I do not.

17 Q Would you say that a data breach involving an
18 individual's data could increase the likelihood that someone
19 will be targeted by an online scam regardless of whether that
20 individual holds cryptocurrency?

21 A That's accurate.

22 Q And information obtained through data breaches
23 involving, I think you gave the examples of Yahoo, LinkedIn,
24 Facebook, Marriott, they're not going to include the data of
25 anyone who didn't use those services; correct?

1 A I don't know that for sure, what type of data was
2 released in each of those instances. In other words, if the
3 Facebook data breach involved an individual user plus their
4 contact list, then that would be individuals who are greater
5 than the specific individual whose data was breached. Does
6 that make sense?

7 Q That does make sense. So, if I understand it
8 correctly, to the -- it depends on the nature of the
9 information that was involved in the breach?

10 A Yes, ma'am.

11 Q Okay, but -- well, let me say it this way.
12 Hypothetically, if it did not involve -- a data breach of,
13 let's say, Facebook -- did not involve the contact
14 information, an individual's contact information, an
15 individual Facebook user's contact information, would that
16 data breach have captured information of individuals who are
17 not users of Facebook?

18 A Again, it depends on the nature of the breach. If the
19 breach involves, you know, into administrator accounts on
20 that individual's profile, then anything that individual has
21 accessed to include other individuals -- you know, if this
22 individual that was targeted serves in a data processing
23 capacity or somehow stores information of other individuals
24 or financial information of other individuals within their
25 network or on their system and that data breach compromised

1 that, in other words, it's not just a data breach about your
2 name or your personally-identifiable information, but it's a
3 data breach of your system and your administrator access to
4 your entire files, then the data breach could be much larger.

5 Q You don't know what steps, if any, any of the customers
6 of debtors whose names have been redacted in this case have
7 taken to protect information that may have been compromised
8 in a data breach; do you?

9 A I do not know that information.

10 Q There are ways for individuals who learn that their
11 information may have been compromised in a data breach to
12 seek to protect that information, aren't there?

13 A Yes. The number one rule in protecting yourself online
14 is not to put your name or other identifiable information out
15 there, so yes.

16 Q Can you take a look at paragraph 10 of your
17 declaration?

18 A Yes, ma'am.

19 Q You testified that the odds of success for identity and
20 asset theft crimes are increased if they are committed
21 against vulnerable persons such as the debtors' customers in
22 these Chapter 11 cases whose circumstances provide greater
23 opportunity to or reduced defense against the malefactor.

24 Can you tell me what the basis is for your assertion
25 that any of the debtors' customers are vulnerable persons?

1 A Similar to my answer before, it is an assessment based
2 on the very quick change that FTX's prominence and purported
3 offerings to customers demonstrated in this case. In other
4 words, FTX was seen as the pillar and strength and shining
5 star of the cryptocurrency industry and I think it generated
6 a lot of trust, safety, and security in its customer base
7 that was quickly changed based on the nature of this -- of
8 everything that occurred. And so I think when someone
9 encounters that type of violation, for lack of a better word,
10 they are in what I would consider a vulnerable state,
11 especially in financial circumstances.

12 Q Okay. So is it fair to say that it is the fact that
13 they are involved in this bankruptcy proceeding that, in your
14 view, makes however many of the debtors' approximately nine
15 million customers who are individuals more vulnerable to
16 potential scams?

17 A Can you repeat the question? I'm sorry.

18 Q Sure. I'm trying to do this as best I can.

19 In your view, is it just the fact that these
20 individuals are involved in this bankruptcy proceeding that
21 makes them, in your view, more vulnerable?

22 A I think the totality of circumstances and
23 considerations in this case make them more vulnerable, this
24 is one element of it.

25 Q Can you explain that a little bit? When you say the

1 totality of the circumstances, you're referring to the fact
2 that they're FTX customers only or is there something more?

3 I'm just trying to get to the -- your -- the basis for
4 your understanding as to why these customers are more
5 vulnerable.

6 A Yes, it is -- if I understand your question correctly,
7 why do I consider these customers more vulnerable, is that --

8 Q Right.

9 A Again, because they were in a business and financial
10 situation that was considered to be very secure, very safe,
11 something that would result in a profitable and income-
12 earning opportunity that very quickly, very publicly, very
13 steeply, those circumstances changed to be the exact inverse
14 of that. And when you, in my opinion, deal with that type of
15 cognitive dissonance between what you expect and what reality
16 presents, it creates a situation in which you may be more
17 willing to seek ways to correct that, and that is an
18 opportunity for criminal actors to take advantage of that
19 perspective, that position, or that mental state, and may
20 make those individuals more vulnerable to the types of
21 cybercrimes I've described.

22 Q In your view, are all of the something close to nine
23 million customers of FTX equally vulnerable because of their
24 involvement with FTX?

25 A I think they're all equally vulnerable not necessarily

1 because of this mental state, if you're focused on paragraph
2 10, I think they're all equally vulnerable because of the
3 increased risks in this situation, the circumstances I've
4 described, the nature of cryptocurrency, the public profile
5 of this case, the inflammatory nature of crypto Twitter, the
6 lack of institutional and traditional financial backstops and
7 provisions and protections that are in place. I think
8 they're equally vulnerable for all of the circumstances, not
9 just what's described in paragraph 10.

10 Q Well, is paragraph 10 intended to be referring to the
11 customer's mental state? Because the last sentence of that
12 says some of the debtors' individual customers may be
13 vulnerable due to the monetary losses they have experienced.

14 A Vulnerability in this specific paragraph, paragraph 10,
15 is a perspective and I wouldn't disagree with the
16 characterization of mental state, but what I mean in that
17 last sentence is that mental state and that perspective of
18 victimization and intent to correct that victimization or
19 recoup from those losses, if your losses are higher or the
20 valuations you have placed at FTX that are now not available
21 to you, I am presenting that that creates a potentially
22 higher level of vulnerability because of the valuations
23 involved.

24 Q You testified earlier that you don't know the
25 identities of any of the debtors' customers whose names have

1 been redacted from the filings in this case, so is it fair to
2 say that you don't know the financial circumstances of any of
3 those individuals?

4 A That is correct.

5 Q In preparing your testimony today, did you -- or your
6 declaration -- did you attempt to determine whether or not
7 being involved in a bankruptcy proceeding outside of the
8 cryptocurrency context makes an individual more vulnerable to
9 attempted identity and asset theft crimes?

10 A I think those circumstances, in my opinion, are
11 different than this situation because of the cryptocurrency
12 element, so I did not.

13 Q You did not.

14 Is it fair to say that, in your opinion, the most
15 relevant types of online financial fraud scams here are
16 business email compromise, romance scams, pig butchering,
17 phishing attacks, and account spoofing?

18 A I don't think you listed SIM swaps, which I would add
19 to that list.

20 Q Okay.

21 A That's certainly not an all-inclusive list, I think
22 those are the ones with which I have the most personal
23 experience of conducting investigations related to
24 cryptocurrency schemes, which is why I listed them.

25 Q Can you look at paragraph 13 of your declaration? This

1 refers to business email compromise scams.

2 A Yes, ma'am.

3 Q Is that sometimes also referred to as an email account
4 compromise?

5 A I would not refer to it as that.

6 Q You've never heard that?

7 A I've heard of email account compromise, but I don't
8 equate it to business email compromise.

9 Q What's the difference?

10 A An email account compromise could just be unauthorized
11 access to your individual email for a variety of reasons,
12 maybe not necessarily financially motivated. It could be
13 just to find information about you, a stalking case or some
14 other way to obtain information on you. Business email
15 compromise is specifically intended to misrepresent a
16 business transaction or operation in email format and target
17 an individual for the purpose of illicit financial gain.

18 Q I see, okay. Can a business email compromise scheme
19 target anyone with an email address?

20 A Can it target anyone with an email address?

21 Q Yes.

22 A Yes.

23 Q Business email compromise scams are not unique to the
24 cryptocurrency context; correct?

25 A That is correct.

1 Q In preparing your declaration or your testimony today,
2 did you review any data or research comparing how often known
3 cryptocurrency holders are targeted with business email
4 compromise scams versus how often individuals who are not
5 known cryptocurrency holders are targeted with that kind of
6 scam?

7 A I did not make that distinction.

8 Q And a similar question, but slightly different. In
9 preparing your declaration or your testimony in this matter,
10 did you review any data or research comparing how often known
11 cryptocurrency holders are victims of business email
12 compromise scam versus non-cryptocurrency holders?

13 A Again, I didn't make comparison between cryptocurrency
14 holder and non-cryptocurrency holder. My assessments are
15 based on the cryptocurrency holder information being more
16 substantive and fruitful for identifying individuals for
17 criminal schemes.

18 Q So you're not aware of any data that shows that
19 cryptocurrency holders are more likely to be victims of
20 business email compromise scams than non-cryptocurrency
21 holders, are you?

22 A I believe the Chainalysis report does make crypto-
23 specific statistical determinations, but I don't have those
24 memorized or part of --

25 Q You don't have them memorized?

1 A -- part of my information, yeah.

2 Q Why --

3 A And --

4 Q -- why don't I show you what I think is what you're
5 referring to, a 2023 crypto crime report dated February 23rd,
6 it was attached as Exhibit E to your declaration?

7 A Yes, that's what I'm referring to.

8 Q Do you have a copy of that or do you need a copy of
9 that?

10 A Yes, ma'am.

11 Q You do have a copy?

12 A Yes, ma'am.

13 MS. TOWNSEND: Your Honor, do you need a copy of
14 this --

15 THE COURT: I have it. Thank you.

16 (Pause)

17 BY MS. TOWNSEND:

18 Q So you indicated that this report -- well, let me ask
19 you this first. What's chain analysis?

20 A It's Chainalysis --

21 Q Chainalysis, excuse me. What is Chainalysis?

22 A They are an investigative company that provides data on
23 all types of crypto operations, everything from transactions
24 to criminal activity and in between. They also are a third
25 party supplier of a blockchain analytics tool called Reactor

1 that I referred to in my credentials, and Reactor is a
2 searchable engine that allows you to identify cryptocurrency
3 transactions and use that for attribution of individual
4 users.

5 Q Did you have any involvement in the preparation of this
6 report?

7 A No, ma'am.

8 Q Is this report one of the documents that you relied on
9 to prepare your testimony in this matter?

10 A I read this report as part of my job for all functions
11 that I do related to crypto investigations, not specifically
12 for my testimony.

13 Q Okay. You indicated that this report has data that
14 shows how often cryptocurrency holders or known
15 cryptocurrency holders are targeted with business email
16 compromise schemes versus non-cryptocurrency holders -- I
17 realize it's a big report, but can you point this to me,
18 this --

19 A I want to make a clarification on that.

20 Q Oh, of course.

21 A This report documents and reports on cryptocurrency
22 crimes, of which business email compromises are one of them,
23 if I believe -- if I remember the category. From there, it
24 would be possible to make the distinction you're asking me
25 about about business email compromise crimes that involve

1 cryptocurrency, which I would get from this report to DOJ's,
2 the FBI's Bureau of Statistics about business email
3 compromise in general.

4 I wasn't saying that I could --

5 Q I see.

6 A -- go to this report and make that distinction. I
7 could use this report for data in order to then make that
8 distinction.

9 Q Okay, I misunderstood. So, sitting here today, you
10 can't speak to the difference between how much more
11 frequently a known cryptocurrency holder is a victim of
12 business email compromise scam than a non-known
13 cryptocurrency holder, can you?

14 A I could not give you that data.

15 Q Okay. Can you turn to Exhibit D of the declaration
16 that you proffered? And let me know if you -- I think you
17 have a copy of everything -- or you don't have a copy of it?

18 A Yeah, I just need to know the tab, please.

19 Q It's -- oh --

20 UNIDENTIFIED SPEAKER: It's tab 5.

21 BY MS. TOWNSEND:

22 Q Tab 5.

23 A Yes, ma'am.

24 Q Can you tell me what this is?

25 A This is a business email compromise report as published

1 by -- I think this is an FBI advisory.

2 Q And is this one of the documents that you relied on in
3 preparing your declaration?

4 A Yes.

5 Q If you look at paragraph 13 of your declaration,
6 there's a cite to the -- and I believe a quote from this
7 document in the last sentence of paragraph 13. Do you see
8 that?

9 A Yes, ma'am.

10 Q Okay. Your declaration, the last sentence reads,
11 "knowledge of the target's personal details is integral to
12 the execution of the scheme," referring to the business email
13 compromise scheme, "such that the Federal Bureau of
14 Investigation's first recommended safeguard against them is
15 to be careful with what information you share online," dot,
16 dot, dot. Do you see that?

17 A Yes, ma'am.

18 Q If you look at the document that you cited to,
19 Exhibit D.

20 A Yes, ma'am.

21 Q The last part of that FBI proviso says -- it's the
22 first, I think, bullet point under how to protect yourself.
23 Do you see that?

24 A Yes, ma'am.

25 Q And it indicates, by openly sharing -- or it states, be

1 careful with what information you share online or on social
2 media by openly sharing things like pet names, schools you
3 attended, links to family members, and your birthday, you can
4 give a scammer all the information they need to guess your
5 password or answer your security -- or answer your security
6 questions, excuse me.

7 When you stated in your declaration that knowledge of
8 the target's personal details is integral to the execution of
9 a business email compromise scheme, are those the kind of
10 personal details -- pet names, schools attended, birthdays --
11 that you were referring to?

12 A Those could certainly be helpful in a business email
13 compromise. Business email compromise details, however, are
14 more related to business activities of the individual,
15 whether they're involved in purchasing a home or, you know,
16 buying a business or selling a business, or conducting any
17 type of online business operations.

18 Q So different information than what's in the FBI
19 proviso, in your view, or more financial information?

20 A Yeah. I mean any information, when you're conducting a
21 criminal scheme, is of value. So, in my experience, have I
22 seen business email compromise that referenced what the FBI
23 is listing here about personal -- what I would consider
24 personal versus business details, I have not seen that.
25 However, the personal details that are listed here would be

1 used to create what I call the dossier of the individual and
2 from that I could learn their business operations, learn what
3 they're engaged in, and then specifically tailor the business
4 email compromise to more effectively target them.

5 So it is related, it's just not something that would
6 directly be in the business email compromise -- or business
7 email of the business email compromise scheme.

8 Q Would you say that not -- or being careful about
9 sharing that kind of information online is an online safety
10 tip that's generally applicable to everyone?

11 A Yes.

12 Q Let's talk about phishing. Is it fair to say that
13 phishing is a way to carry out a business email compromise or
14 email account compromise scam?

15 A Yes, the distinctions and titles and definitions
16 sometimes are overlapping.

17 Q And phishing involves a bad actor posing as a known or
18 trusted entity through an email, text message, or instant
19 message; right?

20 A That's correct.

21 Q A phishing scheme could target anyone who uses email,
22 text messages, or instant messages; correct?

23 A Yes, it can.

24 Q It's not unique to the cryptocurrency context, is it?

25 A It is not unique to cryptocurrency.

1 Q And, in your professional experience, you've seen
2 successful phishing attacks in the cryptocurrency context and
3 outside the cryptocurrency context; haven't you?

4 A Yes, ma'am.

5 Q In preparing your declaration or your testimony in this
6 matter today, did you review any data or research comparing
7 how often known cryptocurrency holders are phishing targets
8 versus how often non-known cryptocurrency holders are
9 phishing targets?

10 A No, ma'am.

11 Q And, a similar a question, in preparing your testimony
12 in this matter or your declaration, did you review any data
13 or research comparing how often known cryptocurrency holders
14 are victims of phishing attacks versus how often individuals
15 who are not known cryptocurrency holders are victims of
16 phishing attacks?

17 A I did not review data; I relied on my personal
18 experience.

19 Q And, in your personal experience, are known
20 cryptocurrency holders more often victims of phishing attacks
21 than non-known cryptocurrency holders?

22 A Yes, ma'am, it's a more effective way to generate
23 criminal proceeds because of the circumstances of and nature
24 of the asset, as I described earlier; it's instantaneous,
25 near-instantaneous, it's global, it's valuable, it's pseudo-

1 anonymous, it's irreversible.

2 And so it is both the method and the means in which the
3 majority of criminal schemes in an online sense are conducted
4 in our -- in the bulk of our investigations.

5 Q So just so I understand your answer, it's your
6 testimony that in your experience you're more likely to be a
7 victim of a phishing attack if you are a known holder of
8 cryptocurrency than if you are not a known holder of
9 cryptocurrency?

10 A Again, we don't make those distinctions. What I'm
11 saying is it's more -- the schemes are carried out using
12 cryptocurrency in an overwhelming number of cases because
13 that's how the criminals are paid and that's how the proceeds
14 are transferred. Whether or not the criminal knows the
15 individual is a known holder or not, we don't make that
16 distinction, similar to the answers I provided before.

17 Q Okay. I just wanted to clarify that.

18 Can you look at Exhibit C to your declaration? And let
19 me know if you need a copy -- or if anyone else needs a copy.

20 (Pause)

21 A Is that --

22 Q It's a news article from --

23 UNIDENTIFIED SPEAKER: It's tab 4.

24 BY MS. TOWNSEND:

25 Q It's tab 4, I'm sorry.

1 A Yes, ma'am.

2 Q This is a news article from December 2022 entitled,
3 "Crypto Users Claim Gemini Email Leak Occurred Much Earlier
4 than First Reported."

5 Is this an article that you relied on in preparing your
6 declaration today -- or your testimony today? Excuse me.

7 A I don't recall relying on this heavily. I think this
8 was included just as a means of example and reference.

9 Q Okay. The article reported that after the
10 cryptocurrency exchange, Gemini suffered a data breach, users
11 of that exchange reported receiving phishing emails; is that
12 right?

13 A That's --

14 Q Is that your understanding?

15 A That's correct.

16 Q Okay. And that data breach included the customers'
17 email addresses and partial phone numbers, not just their
18 names; is that correct -- or is that your understanding?

19 A Yes, that's correct.

20 Q Do you have any information about those phishing
21 attempts related to that Gemini leak other than what is in
22 Exhibit C?

23 A No, ma'am.

24 Q You don't know, for example, whether any of those
25 phishing attempts were successful?

1 A Correct.

2 Q Can we look at paragraph 17 of your declaration? And
3 this pertains to account spoofing.

4 A Yes, ma'am.

5 Q Is account spoofing another way to carry out a business
6 email compromise or email account compromise scam?

7 A Again, the distinctions blur because there is email
8 involved in an account-spoofing scheme. So, by technical
9 definition, you could call it a business email compromise,
10 but the precipitating criminal action of the account spoof is
11 not generally conducted through business email compromise,
12 although it can be.

13 Q So is it fair to say that account spoofing entails a
14 bad actor disguising an email address, display name, phone
15 number, text message, or website URL to convince the target
16 that the source of a message is legitimate?

17 A That's accurate.

18 Q Account spoofing can target anyone who uses a computer
19 or a cell phone; right?

20 A Yes, ma'am.

21 Q And it's not unique to the cryptocurrency context; is
22 it?

23 A No, ma'am.

24 Q In preparing your testimony, did you review any data or
25 research that compared how often known cryptocurrency holders

1 are targets of account-spoofing scams versus non-known
2 cryptocurrency holders?

3 A Similar answer as to before, I did not make those
4 distinctions.

5 Q Okay. And I'm sorry for the repetition.

6 A No, just --

7 Q And, in preparing your testimony, did you review any
8 data or research comparing how often known cryptocurrency
9 holders are victims of account spoofing as opposed to non-
10 cryptocurrency holders?

11 A No. Again, in my experience, the majority of victims
12 and targets that we dealt with were cryptocurrency holders by
13 nature of how these crimes are executed.

14 Q I understand; similar answer to the previous types of
15 scams?

16 A Yes, ma'am.

17 Q Can you look at paragraph 18 to your declaration?

18 A Yes, ma'am.

19 Q This relates to In re Celsius Network, LLC. Does FTI
20 Consulting have any involvement in the Celsius bankruptcy?

21 A Not in my practice, I don't know about FTI as a whole.

22 Q Okay. So let me ask you this then, do you personally
23 have any involvement in the Celsius bankruptcy?

24 A No, ma'am.

25 Q Your declaration states that many Celsius customers

1 became the target of phishing attacks by scammers posing as
2 bankruptcy lawyers, using emails and phone calls. What's the
3 basis for that statement?

4 A I'm sorry, can you repeat the question?

5 Q Sure. In paragraph 18 of your declaration, you state
6 that many Celsius customers became the target of phishing
7 attacks by scammers posing as bankruptcy lawyers, using
8 emails and phone calls. What is the basis for that statement
9 in your declaration?

10 A The referenced attachments to the declaration, both the
11 media reports, as well as the legal documents that were
12 produced following these phishing and other criminal
13 attempts.

14 Q Is that statement based on anything else?

15 A Is the statement based on anything else, other --

16 Q I'm not trying to trick you. I'm just asking if your
17 knowledge of what's in paragraph 18 is based solely on those
18 exhibits that you cited in your declaration.

19 A Yes, that's correct.

20 Q Do you know how many Celsius customers were the targets
21 of those phishing attempts?

22 A I don't know specifically.

23 Q Do you know how many of the Celsius customers who were
24 the targets of those phishing attempts were foreign
25 individuals?

1 A I don't know, ma'am.

2 Q And do you know how many of those phishing attempts
3 targeting Celsius customers were successful?

4 A No, ma'am.

5 Q The exhibits attached to your declaration -- well,
6 strike that.

7 Do you know how debtor's attorneys in the Celsius case
8 became aware of these phishing attempts?

9 A No.

10 Q The notices that are attached to your declaration that
11 have been entered into evidence indicate that there were
12 steps taken both by the court and by the parties in the
13 Celsius bankruptcy to notify anyone involved of those
14 phishing attempts, is that your understanding?

15 A That is my understanding.

16 Q Do you think that's a prudent step to take?

17 A I do, but even as referenced in those attempts, there
18 is acknowledgment and admission that they will not reach all
19 customers. So I think that's a limited approach, at best.

20 Q But it is an approach that you would -- that you would
21 agree the Court should have taken in that case or that the
22 debtor's counsel should have taken in that case?

23 A Yes, ma'am.

24 Q And why is that?

25 A You have to try and address the problem.

1 Q And one way to address the problem is to put people on
2 notice that it's possible that they may be the target of
3 phishing attempts?

4 A That is one way to address the problem, yes.

5 Q Can you look at paragraph 14 of your declaration? And
6 I apologize for jumping around a little bit.

7 Romance scams are another common type of online
8 financial fraud; correct?

9 A Yes, ma'am.

10 Q And that's when a bad actor pretends to build a
11 romantic relationship with a victim online in order to
12 convince them or guilt them into sending money; right?

13 A Yes, ma'am.

14 Q Romance scams can target anyone; correct?

15 A Yes, ma'am.

16 Q And they're not unique to the cryptocurrency context;
17 are they?

18 A No, ma'am.

19 Q In preparing your testimony in this case, did you
20 review any data or research comparing how often known
21 cryptocurrency holders are targets of romance scams versus
22 how often individuals who are not known cryptocurrency
23 holders are targets of romance scams?

24 A A similar answer as to before, ma'am, no.

25 Q And in preparing your testimony did you review any data

1 or research comparing how often known cryptocurrency holders
2 are victims of romance scams versus how often those
3 individuals who are not known cryptocurrency holders are
4 victims of romance scams?

5 A Similar to before, no, it's just personal experience
6 that the majority of these scams involve cryptocurrency.

7 Q Can you look at page -- or paragraph, excuse me, 15,
8 the next paragraph? Pig butchering is another type or common
9 type of online financial fraud, in your view?

10 A Yes, ma'am.

11 Q And these are -- is it fair to say that a pig
12 butchering scam that targets a bad actor who forms an online
13 relationship with their target, convinces them to invest in
14 cryptocurrency, and then steals the invested funds?

15 A Yes, ma'am.

16 Q Though it involves the use of cryptocurrency to
17 perpetrate the fraud, pig butchering targets individuals who
18 are not known cryptocurrency holders via text message and
19 social media; right?

20 A I don't have personal experience with that. Every pig
21 butchering case that I have seen involves cryptocurrency
22 holders by nature of the scheme itself to continue to invest
23 not only in the opportunity, because it takes advantage of
24 cryptocurrency holders, it explains different facets of the
25 industry and leverages this idea of quick returns, high-

1 volume returns, and is facilitated by all of the
2 characteristics of cryptocurrency that I've listed several
3 times in order to be able to be successful.

4 Q So, in every example of pig butchering that you have
5 personal experience with, the victim, prior to being
6 contacted by the bad actor, already had an existing wallet,
7 cryptocurrency assets; is that accurate?

8 A The ones that I've investigated. It is -- if I
9 understand your question, it is possible for that person not
10 to have cryptocurrency and for the bad actor to convince them
11 to set up a cryptocurrency wallet to further facilitate the
12 crime, but that again, by nature, involves cryptocurrency.

13 Q In those cases that you have dealt with in your
14 personal experience, did the target know that the
15 individual -- strike that, I said it backwards.

16 In those cases that you have dealt with in your
17 personal experience involving pig butchering, did the bad
18 actor know in advance that the target already had
19 cryptocurrency assets?

20 A I can't testify to that because that is not a focus of
21 our information-gathering or interview of suspects, that's
22 not something we focus on related to the investigation.

23 Q So you don't know because that isn't something that you
24 would have asked during the investigation --

25 A That's correct.

1 Q -- is that right?

2 A That's correct.

3 Q Okay. So, just to make sure I have this right, you
4 don't know if any of those individuals in those pig
5 butchering scams that you've dealt with personally were
6 targeted because they were known cryptocurrency holders?

7 A We made that conclusion based on who they targeted, but
8 I did not ask the criminal actor specifically that question.

9 Q I see. How many such cases have you dealt with in your
10 career?

11 A Personally or in a leadership position?

12 Q Personally, so the group of pig butchering cases that
13 we're talking about.

14 A There have been three cases that I would classify as
15 specific pig butchering.

16 Q Okay. What's the most common form of cryptocurrency
17 scam?

18 A Theft of crypto assets.

19 Q Are investment scams the most common form of
20 cryptocurrency scam?

21 A I mean, that's a very broad definition. Again, I don't
22 make distinctions on most common scam. Can you be more
23 specific on what you mean by an investment scam? Maybe I can
24 answer the question then.

25 Q Sure. Why don't you take a look at Exhibit E, if you

1 have that handy again, that's the 2023 crypto crime report
2 that was attached to your declaration.

3 A Yes.

4 UNIDENTIFIED SPEAKER: Tab 6.

5 MS. TOWNSEND: Tab 6. Thank you.

6 BY MS. TOWNSEND:

7 Q Can you look at page 91 --

8 A Yes.

9 Q -- of that?

10 A Yes.

11 Q I believe I have the right page -- oh, I apologize, 92.
12 I had the wrong page. It's 92 at the bottom.

13 A Yes, ma'am.

14 Q Does this -- hang on a second. I want to make sure I'm
15 not pointing you in the wrong direction.

16 THE COURT: Are you referring to 92 of the report
17 or the page numbers at the top?

18 MS. TOWNSEND: That is the issue, Your Honor.

19 Thank you.

20 BY MS. TOWNSEND:

21 Q Yes, can you take a look at page -- it's 47 at the
22 bottom, 91 at the top, I believe.

23 (Pause)

24 A Yes, ma'am.

25 Q I apologize. I think I just have the wrong page for

1 you and I don't want to tell you the wrong thing. Give me
2 one second.

3 A I do recall the statistics in this report that --

4 Q You do?

5 A -- reports investment scams as -- is that what you're
6 referring to?

7 Q That is what I'm referring to and -- well, let me ask
8 you this first. You've read this report, using the
9 definition of investment scam that's utilized in this report,
10 is it your understanding that investment scams are the
11 largest or, by far at least, the most -- the largest by
12 revenue of any type of cryptocurrency scam? Let me know if I
13 botched that.

14 A I believe -- again, this is going from memory, not
15 reading off the report, but memory serves that they did
16 report investment scams as the highest volume and romance
17 scams being the most damaging per individual victim, I
18 believe that was those two qualifications were in that same
19 reference within the report.

20 Q How would you -- what's your understanding in terms of
21 how it's utilized in this report of what an investment scam
22 is?

23 A It's a very wide spectrum from individual token
24 offerings being minted and presented as an investment
25 opportunity that those behind that scheme then quickly exit

1 the opportunity with investor funds, it's called a rug-pull,
2 all the way down to the other end of the spectrum to
3 conducting some of the schemes we've identified and discussed
4 today where I manipulate you into a cryptocurrency investment
5 that is either fraudulent or intended to abscond with your
6 funds that you are purportedly investing in cryptocurrency.

7 Q This report addresses pig butchering separately, it
8 doesn't treat it like an investment scam; right?

9 A I would not want to testify to the contents of the
10 report with that level of specificity. It's a lengthy report
11 that I reviewed, but I don't make those types of very
12 specific analyses from the report.

13 Q Can you look at page 87 of the report?

14 THE COURT: Before we move on, Ms. Townsend --

15 MS. TOWNSEND: Yes, Your Honor.

16 THE COURT: -- let's take a short recess.

17 MS. TOWNSEND: Of course, Your Honor.

18 THE COURT: Recess until 11:30, we'll come back.

19 During the break, you're not allowed to talk to
20 anybody about your testimony.

21 THE WITNESS: Yes, sir.

22 (Recess taken at 11:15 a.m.)

23 (Proceedings resumed at 11:31 a.m.)

24 THE CLERK: All rise.

25 THE COURT: Thank you, everyone. Please be

1 seated.

2 Ms. Townsend, you may proceed.

3 MS. TOWNSEND: Thank you, Your Honor.

4 And I don't have much more left. I think that's
5 probably good for everyone.

6 CROSS-EXAMINATION (Resumed)

7 BY MS. TOWNSEND:

8 Q Can you take a look at Exhibit E, which is Tab 6, I
9 believe, which is the report that we were talking about
10 earlier. I used the break time to find the section that I
11 was looking at. Unsurprisingly, it's entitled "Scams."

12 So if you turn to page 86 at the bottom.

13 A Yes, ma'am.

14 Q Do you see the graph in the middle of the page there?

15 A Yes, ma'am.

16 Q And that is the amount of yearly -- that reflects the
17 amount of yearly crypto scam revenue, a decrease from 2021 to
18 2022 from 10.9 billion to 5.9 billion; do you see that?

19 A Yes, ma'am.

20 Q Do you think that's an accurate assessment?

21 A Of the decrease?

22 Q Of -- yes.

23 A Yes, ma'am.

24 Q Okay. Can you look at the next page, page 87.

25 A Yes, ma'am.

1 Q And there's a graph in the middle of that page that
2 lists the top 10 crypto scams by revenue in 2022; do you see
3 that?

4 A Yes, ma'am.

5 Q The top being TheHyperVerse.net; do you see that?

6 A Yes, ma'am.

7 Q What kind of scam is that?

8 A I did not investigate or research the individual scams,
9 so I could not testify to that.

10 Q Do you have any reason to doubt the representation in
11 the paragraph below that graph that states:

12 "All 10 of 2022's top scams were investment scams,
13 which is a category dominated overall scam revenue last
14 year."

15 A I do not have a reason to doubt that.

16 Q If you look at the next page, page 88, I just wanted to
17 flag this for you. It indicates a guide to the scam
18 categories we track.

19 Does this reflect a distinction between romance scams
20 and investment scams, for example?

21 A This analysis does, yes.

22 Q And does it treat pig-butcherering scams as a form of
23 romance scam?

24 A Yes, it does.

25 Q You testified earlier today that in your view, and I'm

1 going to paraphrase, because I'm just going on my notes, so
2 if I get something wrong, feel free to correct me, but I
3 understood your testimony to be that the vast majority of FTX
4 consumers didn't demonstrate a high level of sophistication
5 because they fell for, I think the term you used was
6 "investment approach."

7 Can you explain what you meant by that.

8 A What I was trying to explain with that, my response, as
9 I remember, was to a question about digital asset and crypto
10 technical sophistication.

11 Does that reflect what you're getting at?

12 Q I understood you to be testifying that you thought FTX
13 consumers, debtors' customers, in particular, were, I think
14 the term you used was "less technical" and the rationale, I
15 think that you gave for that was they fell for investment --
16 they gave up their keys with an investment approach. And I
17 was hoping you could explain what you meant by that.

18 A So what I mean by that, the word "fell," I don't know
19 if --

20 Q I don't think you used that, so go ahead.

21 A Okay. When asked the question about technical
22 sophistication of a crypto user, generally users who
23 participate in an exchange are not, by nature, and by
24 default, the most technically sophisticated, because an
25 exchange is designed to be an easier and less-manual way to

1 participate in cryptocurrency offerings and operations.

2 The technical aspect of how an exchange works requires
3 that you are surrendering your private keys to the eventual
4 wallet that your investment goes into, because the exchange
5 holds omnibus accounts and uses the entirety of funds for
6 different business processes. And by nature of that, they
7 need your keys -- they need the keys to that wallet that
8 receives your funds.

9 As a general rule, the more technically sophisticated
10 and security-conscious crypto user will have a cold storage
11 or maintain possession of their keys at all times. And I
12 think the second part of that is, my assessment of that is
13 based on -- was based on -- is based on FTX, their marketing
14 approach that specifically highlighted and ease of use and
15 not requiring a high level of technical acumen with digital
16 assets or cryptocurrency.

17 Q Okay. Thank you for that clarification.

18 Is that to say that in your view, someone who uses an
19 exchange is -- strike that. Let me ask it this way.

20 In your experience, is it common for an individual who
21 is a novice in investing in cryptocurrency to hold, say, more
22 than \$10 million in an exchange?

23 A Can you repeat it one more time?

24 Q Sure. In your experience, is it common for an
25 individual who is a novice when it comes to cryptocurrency

1 investing to hold, say, \$10 million or more in an exchange?

2 A I wouldn't call that common, based on the amount of
3 crypto involved; I mean, that's a very high volume. So, you
4 know, our investigations don't involve individuals with one
5 holding of that amount in an exchange.

6 Q Just to make sure that I'm focused on the piece of my
7 question, would you expect for a person to have that -- an
8 individual to have that volume of investment in an exchange
9 if they had no experience in cryptocurrency?

10 A I wouldn't expect it, but I wouldn't be surprised by
11 it. There are individuals, high-net worth individuals who
12 got into cryptocurrency offerings at a very quick pace and
13 were caught up in the promise of cryptocurrency in many
14 circumstances. So it's not a common practice, but it would
15 not be unheard of.

16 Q In your experience, have you ever known an individual
17 cryptocurrency investor with a novice, new to cryptocurrency,
18 with \$10 million or more in a single exchange?

19 A Have I had personal experience with those
20 circumstances?

21 Q Correct.

22 A I have not.

23 Q You testified earlier about, I believe you called it --
24 I may mischaracterize this -- the "mental state" of
25 individuals who -- strike that. Let me restart and be a

1 little clearer.

2 You testified earlier about your views as to general
3 mental state of individuals who may be customers of debtors,
4 whose names are redacted in this case. Do you think that
5 individuals whose -- who have money potentially tied up in
6 this bankruptcy would be more cautious of investment and
7 other types of scams moving forward?

8 A I think that's a possibility.

9 Q In your experience, has being the victim of some form
10 of cybercrime, let's say, made people more wary, more aware,
11 more cautious of potential future scams?

12 A Yes.

13 MS. TOWNSEND: No further questions, Your Honor.

14 THE COURT: Okay. Thank you.

15 Any other cross?

16 (No verbal response)

17 THE COURT: Redirect?

18 MR. SASSON: Your Honor, there's a short redirect.

19 REDIRECT EXAMINATION

20 BY MR. SASSON:

21 Q Mr. Sheridan, do you recall the line of questioning
22 from earlier by Ms. Sarkessian, counsel to the U.S. Trustee,
23 regarding moving assets to cold wallets?

24 A Yes, sir.

25 Q If FTX moved customer funds to cold wallets, does that

1 mean that those customers don't necessarily have other
2 cryptocurrency in hot wallets elsewhere?

3 A It does not.

4 Q So customers -- so a customer can be targeted with
5 respect to their crypto or fiat currency, completely
6 unrelated to the fact that FTX moved their assets to a cold
7 wallet in these bankruptcy cases?

8 A Yes, sir. Not only could their other assets be
9 targeted, but their profile would be used to facilitate
10 further criminal schemes; in other words, if an individual is
11 identified as a known cryptocurrency investor, it is possible
12 to identify and use their identity to perpetrate other
13 schemes leveraging that information.

14 Q And if I were to stipulate to you here today that the
15 FTX debtors have moved, or are in the process of moving all
16 of their cryptocurrency to cold wallets in these bankruptcy
17 cases, does that change your conclusions at all, as set forth
18 in your declaration?

19 A No, sir.

20 Q All right.

21 MR. SASSON: Nothing further, Your Honor.

22 THE COURT: Thank you.

23 UNIDENTIFIED SPEAKER: Nothing, Your Honor.

24 THE COURT: Thank you. You may step down,
25 Mr. Sheridan. Thank you.

1 THE WITNESS: Yes, sir.

2 (Witness excused)

3 MR. GLUECKSTEIN: I think that concludes the
4 evidence, Your Honor.

5 THE COURT: Okay.

6 MR. GLUECKSTEIN: So I think we can move to
7 argument. I will address first --

8 MS. SARKESSIAN: Before we move to argument, Your
9 Honor, I just want to have a clarification. There was an
10 affidavit that was attached to the motion of the Ad Hoc
11 Committee of an individual whose name was redacted. They
12 have not introduced that person as a witness, so I just want
13 to clarify that that declaration will not be part of the
14 evidence at this hearing.

15 THE COURT: It is not.

16 UNIDENTIFIED SPEAKER: It's not, Your Honor.

17 MS. SARKESSIAN: Thank you, Your Honor.

18 MS. TOWNSEND: A similar clarification with
19 respect to the declaration of Philip James, which was also
20 attached, I think, as 1139.

21 MR. WENDER: Just to get this on the record, Your
22 Honor, David Wender with Eversheds, we're not seeking to
23 introduce those.

24 With the evidence submitted by the Committee and
25 certain limitations of bringing an individual here without

1 the protections of hiding their identity, we did not move
2 forward with those and we're relying on the evidence admitted
3 in court today.

4 THE COURT: All right. Thank you.

5 That's not -- that declaration is not in evidence
6 either.

7 MR. WENDER: Thank you, Your Honor.

8 THE COURT: Go ahead, Mr. Glueckstein.

9 MR. GLUECKSTEIN: Good morning, Your Honor. Brian
10 Glueckstein, Sullivan & Cromwell, on behalf of the debtors.
11 Your Honor, by the joint motion that was filed by the debtors
12 and the Committee, the Movants jointly seek to extend the
13 period by which customer names should be redacted from public
14 filings in these cases, unless voluntarily disclosed by those
15 customers. Your Honor, we submit, and Your Honor's heard
16 evidence on two independent bases to do so.

17 Section 107(b), Your Honor will recall that under
18 Section 107(b), an order was entered in January that
19 permitted the redaction of addresses, any known addresses of
20 the debtors' creditors and equity holders or natural persons
21 on a permanent basis, but limited the redaction of all
22 customer names and names, addresses, and emails of
23 institutional customers for an additional period, pursuant to
24 Section 107(b)(1) of the Bankruptcy Code, subject to
25 extension.

1 The basic premise of the Court's January order was
2 that the debtors' customer lists, including names and contact
3 information for both individuals and institutional customers
4 are an asset of the debtors' estates and a potential source
5 of value for creditors. Mr. Cofsky, the debtors' investment
6 banker testified again yesterday before Your Honor that that
7 value remains today; in fact, Mr. Cofsky testified that the
8 debtors are actively running a process seeking to determine
9 how to maximize value from the core exchanges of FTX.com and
10 FTX U.S. to a variety of structures that could include their
11 sale as assets or reorganization.

12 The testimony yesterday from Mr. Cofsky was clear
13 that, as the debtors' investment banker, the customer lists
14 containing nine million names is a significant portion of
15 that value in any scenario, including, even, the possibility
16 of selling the customer lists with or without other assets.

17 Mr. Cofsky explained that the customer lists are
18 attractive assets for competitors and operators of other
19 exchanges and also explained why third parties would, in his
20 view, pay the debtors value for them.

21 Mr. Cofsky further described the analysis that he
22 and his team did and testified in his view the immediate
23 disclosure of any names from the customer lists, individual
24 or institutional, would harm the debtors' assets to maximize
25 the value of their assets. The conclusion of Mr. Cofsky is

1 that a critical component of the strategy to monetize the
2 debtors' assets is the continued confidentiality of the
3 debtors' customer lists. This testimony was unrefuted by the
4 objectors and amplified, further, the testimony that this
5 Court credited in January in issuing the prior order,
6 authorizing redactions of customer names.

7 Your Honor agreed in granting the original motion
8 that a customer list is something that is available to be
9 protected by Section 107(b) as a trade secret and that the
10 debtors' customer lists in this case met the standard.

11 Nothing has changed about the nature or
12 confidentiality of the debtors' customer lists since that
13 January hearing and we submit they remain protected by
14 Section 107(b). The debtors are in a position to realize
15 value from these customer lists and exchange assets in
16 significant part because the customer names have been kept
17 confidential to date and the debtors should be permitted more
18 time to complete that process.

19 As Mr. Cofsky further testified yesterday, it is
20 not yet clear at this point, whether the disposition of the
21 customer lists will take place before or in connection with
22 the plan process; nonetheless, guided by the Court's prior
23 ruling, the Movants have only requested at this juncture to
24 formally extend the protection of redacting all customer
25 names under 107(b) for an additional three months from entry

1 of an order, although, it is possible, particularly based on
2 Mr. Cofsky's testimony, that a further extension may prove
3 ultimately necessary.

4 The Movants have been continuing to seek to strike
5 the correct balance to ensure the protection of their assets
6 and customer information and the continued redaction of names
7 is, in our view, appropriate to maintain that value. This is
8 consistent with the Court's prior ruling in January and prior
9 rulings of this Court, including in the Cred case.

10 Neither the U.S. Trustee, nor the Media Objectors,
11 have offered anything new in opposition to the relief
12 requested under Section 107(b). They offer no evidence and
13 their briefing merely recycles arguments that this Court
14 rejected in January and has been disproven by Mr. Cofsky's
15 testimony.

16 The Objectors here have no economic stake in the
17 outcome of these Chapter 11 cases and there's not a single
18 creditor or customer who has opposed the relief requested in
19 the motion, despite it being the customers who face the risks
20 both, financial and personal, from the forced, involuntary
21 disclosure of their names. The Objectors continue to cite to
22 the general principles of the right to public access of
23 records and bankruptcy disclosure requirements. They have
24 not provided evidence of any specific harm being suffered
25 that requires the disclosure of names and constitutional

1 addresses immediately, nor do they recognize, seemingly, the
2 Court's role in being able to modify those requirements for
3 cause shown, as the Court did with the prior order in
4 January.

5 As the Court and all parties in interest have been
6 able to observe, the debtors have been able to efficiently,
7 effectively, and completely administer these cases while
8 redacting customer names and preserving the integrity of the
9 customer lists. Notices have been sent, pleadings have been
10 served, claims bar date procedures established, all with the
11 parameters of the relief obtained in the January order and
12 requested today to be extended.

13 Your Honor, we also submit there's no basis, as
14 suggested in the objections, for the Court to carve out
15 selective portions of the debtors' customers from the
16 redaction order, as suggested. The somewhat arbitrary
17 request by the Media Objectors to reveal the debtors' top 50
18 creditor lists or top 50 institutional customers would
19 actually require disclosure of some of the most valuable
20 names on the list, because those are the customers with the
21 largest account balances, as of the petition date, as
22 Mr. Cofsky discussed yesterday.

23 We submit that would inflict a disproportionate
24 amount of harm and the asset value of the debtors' customer
25 lists and the Media Objectors cite no support for imposing

1 any such conditions.

2 Similarly, the United States Trustee requests
3 certain exceptions for insider of the debtors and when
4 customers would be identified in other filings in other
5 capacities. The U.S. Trustee, likewise, offers no
6 justification for these carve-outs, pursuant to
7 Section 107(b). The U.S. Trustee ignores the debtors' file
8 under seal, unredacted versions of all filings and the U.S.
9 Trustee has that information, to seek Court approval as
10 permitted by the order of any individual names it thinks need
11 to be disclosed.

12 Indeed, the debtors themselves, we have already
13 addressed a legitimate concern on this issue by generally
14 disclosing the names of former directors and officers who
15 might have been customers, but have been publicly identified,
16 such as Mr. Bankman-Fried and his inner circle.

17 Second, the U.S. Trustee offers no legal basis for
18 drawing the further distinction that compromising a portion
19 of the customer lists be determined protected information
20 under Section 107(b). The debtors, in consultation with the
21 Committee, have determined that the continued redaction of
22 customer names for all purposes, thus protects the customers
23 from being identified and poached. And there is no
24 justification presented to put those names into the record of
25 the Chapter 11 cases in any capacity. We submit, Your Honor,

1 that under 107(b), the objections of the continued redaction
2 of the customer names, pursuant to that statute, should be
3 overruled.

4 I'm not going to address the substance of
5 Section 107(c); I'll leave that for the Committee's counsel
6 to address, but I will just note, Your Honor, from the
7 debtors' perspective, that we agree this relief is
8 appropriate under the circumstances. Mr. Sheridan's
9 testimony confirms that the disclosure of individual names
10 will expose those customers to a very real risk of harm.
11 That's precisely the type of harm that Section 107(c) is
12 designed to protect against.

13 I think Mr. Sheridan this morning further
14 amplified the uniqueness of this situation presented by these
15 cases, which we have discussed before Your Honor previously.
16 If granted, Section 107(c) would permanently seal the
17 individual customer names, separate and apart from the relief
18 sought under Section 107(b).

19 Finally, Your Honor, we do address in your
20 briefing the debtors' position that the Court can and should
21 continue to permit the redaction of names and addresses of
22 the individual creditors; creditors who are not customers,
23 but who might be protected by the GDPR, and to the extent to
24 Japan, based on a review of the plain statutory language as
25 set forth.

1 If the other relief is granted, as requested in
2 this motion by the Movants, this is mere incremental relief
3 impacting individual, non-customer creditors in their
4 protected jurisdictions, who are most likely employees.
5 There is no need, in our view, to deviate from the
6 longstanding practice in this district to permit redactions
7 to comply with the GDPR to ensure that the debtor avoids the
8 risk of substantial fines or more in local jurisdictions.

9 The concern here, Your Honor, is not one of making
10 a finding of whether local data-privacy laws or U.S.
11 bankruptcy law trump. On the facts of this case, again,
12 assuming -- we're just making the assumption for purposes of
13 argument -- the other relief is granted, we're talking about
14 a very narrow set of additional relief and the concern, of
15 course, is that irrespective of any findings of this Court,
16 that authorities in those local jurisdictions would seek to
17 take action against the debtors in these cases.

18 And as a result, Your Honor, we would ask, based
19 on the language set forth in the papers, that that small
20 incremental relief be granted as part of the package
21 requested today. With that, Your Honor, subject to any
22 questions, I will turn it over to the Committee to
23 address 107(c).

24 THE COURT: Thank you.

25 MR. PASQUALE: It's still barely the morning, Your

1 Honor. Good morning. Ken Pasquale from Paul Hastings for
2 the Creditors Committee.

3 Your Honor, this Court previously recognized at
4 the prior hearing on these issues that Section 107(c)
5 contemplates sealing individual customer names, among other
6 types of personally identifying information, and the Court
7 referenced that, as does the statute, Section 1028(d) of the
8 Criminal Code, which specifies that type of personally
9 identifying information, including names. So there's no
10 question that 107(c) provides the Court with the authority to
11 grant the relief requested in the joint motion.

12 Now, to be clear, and I say this in hearing some
13 of Ms. Sarkessian's questions, the requested relief in our
14 proposed order under 107(c) is to seal individual customer
15 names; it is not to seal creditor names, and, in fact,
16 creditor identities who are not customers have already been
17 disclosed by the debtors in the schedules.

18 Your Honor, the evidence before the Court today is
19 persuasive and completely uncontroverted, that there is a
20 significant risk to debtors' customers if their names are
21 disclosed, the debtors' customers in this case. This is a
22 crypto bankruptcy case. Mr. Sheridan testified about harms
23 to crypto bankruptcy customers in this case. Not about other
24 cases, not about non-crypto cases, nothing to do with what we
25 are discussing today.

1 The objecting parties, Your Honor, quite
2 cavalierly, dismiss the risk of harm faced by the debtors'
3 individual customers, saying it's not undue risk; it's just
4 risk that everyone faces.

5 In their objection, the media parties, in
6 particular, appeal to "common sense" as the basis for many of
7 their positions. But common sense, whatever their view is of
8 that, is not evidence and neither the Media Objectors, nor
9 the United States Trustee have presented any evidence to Your
10 Honor to contradict Mr. Sheridan's opinions and the proof in
11 the record.

12 Your Honor, just one example of that is the
13 experience in the Celsius bankruptcy cases. We heard
14 questions today, and there was argument raised in their
15 objections, that, well, there's no proof that anyone fell for
16 those scams. Well, no proof that people did not, either.
17 And the mere fact that they occurred, I mean, just dismissing
18 that risk, I find troubling and insensitive.

19 Once the genie is out of the bottle, Your Honor,
20 you can't put it back in and the risk will remain, should
21 names be disclosed, as occurred in the Celsius case, to those
22 customers forever. That's a very significant risk. That is
23 undue harm on the record before the Court.

24 Mr. Sheridan's testimony demonstrates that the
25 risk to FTX cryptocurrency exchange customers, in particular,

1 is significant given the nature of these cases and given the
2 nature of cryptocurrency. Here, disclosing the names of the
3 debtors' customers would enable malefactors to match the name
4 with the value of the customers' assets on the exchange.

5 That information has already been disclosed on the
6 schedules anonymously, and so those who want to take the
7 time -- and as in Celsius, we know people will do this -- and
8 match the names with the value on the exchange; very much
9 akin to if a person's identity was disclosed with their bank
10 account holdings. And as Mr. Sheridan explains, that would
11 cause significant harm to those customers. It would enable a
12 malefactor to have that additional information to use the
13 dark web and other sources to identify and target those
14 individuals.

15 Further, Your Honor, it is illogical and
16 completely unsupported, again, no evidence presented, for the
17 Media Objectors to argue that crypto customers are
18 particularly savvy and would not likely fall for any of these
19 scams. Well, as Mr. Sheridan testified, if that were the
20 case, the data wouldn't be what it is. We wouldn't have the
21 volume of losses in the crypto space as a result of such
22 schemes.

23 Further, as Mr. Sheridan noted, and we all know
24 publicly, that FTX marketed to the mass market,
25 advertisements during the Super Bowl a couple of years ago

1 and the like, which, as we cite in our reply papers, with
2 particular focus on how easy it is and how you don't need to
3 know anything to invest in cryptocurrency. There are
4 approximately nine million customer accounts; certainly,
5 those are not all savvy investors who would not be subject to
6 the types of scams that Mr. Sheridan testified about.

7 Finally, Your Honor, our burden on this motion is
8 not as the objectors contend, to show that there must be
9 certainty of undue risk. That's not the law and, in fact, no
10 support is offered in the objecting -- excuse me -- the
11 objectors' submissions in that regard.

12 To the contrary, in the Access to 2019 Statements
13 case, the Delaware District Court on an appeal held, quote:

14 "Section 107(c) references risk and assessment of
15 risk is forward-looking, while a specific potential harm must
16 be identified, the standard does not require evidence of
17 injury having occurred in the past or under similar
18 circumstances." That's 585 B.R. 733, 751.

19 The debtors and Committee on our joint motion have
20 more than met our burden of proof showing the specific
21 potential harms that the debtors' individual customers face
22 from disclosure of their names. Avoiding that harm, Your
23 Honor, keeping that genie in the bottle, far outweighs the
24 policy of open disclosure in these cases, in these
25 circumstances.

1 And, Your Honor, I'd be remiss without noting that
2 on Wednesday of this week, the Judge Shannon held in the
3 Bittrex cryptocurrency bankruptcy case that:

4 The sealing of creditors' names, individual
5 creditors' names was appropriate under 107(b) and 107(c), and
6 finding as to 107(c), that the crypto industry's primary
7 purpose of allowing immediate, instantaneous, and effectively
8 untraceable transfers of value differentiates it from other
9 industries and gives rise to more material risk of loss and
10 injury to creditors.

11 The same rationale applies here, Your Honor, and
12 we respectfully request that the joint motion be granted.
13 Thank you.

14 THE COURT: Okay. Thank you.

15 MR. WENDER: Good afternoon, Your Honor. David
16 Wender on behalf of the Ad Hoc Committee of Non-U.S.
17 Customers, and, Your Honor, I'll be brief.

18 As required by the Bankruptcy Rules, the Ad Hoc
19 Committee was required, its lawyers were required to file a
20 statement by name, address, and holdings of its individual
21 members. The Ad Hoc Committee filed its motion to seal and
22 redact that information, Judge, anticipating, hopefully, that
23 the debtors would file their motions, which the joint motion
24 was forthcoming. We've joined in that because we seek the
25 same relief.

1 And in hearing Mr. Glueckstein's argument and some
2 of the testimony -- some of the closings already, is that to
3 ensure that a situation, we not voluntarily filed the 2019
4 required by the Code, that our requirements to file 2019,
5 which we actually supplemented earlier this week with new
6 members, are similarly protected, such that our members, and
7 even other customers who join other committees, or who might
8 be obligated under the Code to submit information, are not
9 forced to disclose information that's valuable to the
10 debtors. They could generate value for recoveries later.

11 And it would disclose personally identifiable
12 information themselves and, in fact, we heard testimony,
13 potentially their customers.

14 And so I think that under both, 107(b) and 107(c),
15 the filings of the Ad Hoc Committee, for example, disclosing
16 under 2019 and similarly required filings, is not voluntary
17 disclosures of who we are, should be similarly protected.

18 Thank you, Your Honor.

19 THE COURT: All right. Thank you.

20 MS. SARKESSIAN: And I can say good afternoon,
21 Your Honor. Again, for the record, Juliet Sarkessian, on
22 behalf of the U.S. Trustee.

23 The debtors seek authority to redact from all
24 papers, filed or to be filed with this Court, the following
25 information, three categories: number one, the names,

1 addresses, and email addresses of all customers, whether they
2 be natural persons or legal entities; number two, the names,
3 addresses, and email addresses of all creditors, be they
4 customers or not, or equity holders, that are natural
5 persons, if they are citizens of the United Kingdom, the
6 European Union, or Japan, and are covered by the EU or U.K.
7 General Data Protection Regulation, GDPR, or certain Japanese
8 laws; and the third category are the addresses and the email
9 addresses of customers and other creditors or equity holders,
10 who are individuals, regardless of their citizenship.

11 Your Honor, that last piece of it, Your Honor did
12 grant that in the order of January 20 on a permanent basis.
13 The other two categories were just for 90 days and we are now
14 back with a motion that the debtors, then -- actually, the
15 Movants, the debtors and the Committee, filed in April to
16 extend. Well, the motion is to extend the categories for
17 another 90 days, but there's a little bit of a conflict,
18 because part of what they propose in the order is, on the one
19 hand, it says 90 days, but for customers who are natural
20 persons, there's another paragraph, paragraph 3, that is a
21 permanent redaction of their names. So paragraph 2 says it's
22 for 90 days. Paragraph 3 says it's permanent for you're a
23 customer who's a natural person.

24 My understanding, what was explained to me is
25 while paragraph 2 relates to 107(b) and paragraph 3 relates

1 to 107(c), the audience needs to be -- regardless, if Your
2 Honor is going to grant it, it has to be clear whether it's
3 permanent or for another 90 days. That's certainly what we
4 would ask, that it be clear.

5 The documents that would be subject to these
6 redactions include documents that are the core of a
7 bankruptcy proceeding, that any debtor who is seeking
8 bankruptcy protection must file, including the creditor
9 matrix, statements of assets and liabilities, statement of
10 financial affairs, claims register, proofs of claim,
11 disclosures of professionals, such as the professionals'
12 connections with parties in interest who may be customers,
13 and then, of course, the Bankruptcy Rule 2019 statements, as
14 well as affidavits of service and many other documents.

15 It is black-letter law that bankruptcy proceedings
16 must be transparent and that transparency requires that
17 pleadings that are filed are filed on the public docket and
18 viewable by creditors, other parties in interest, and the
19 public, in general, unless certain enumerated exceptions
20 apply.

21 And, again, this is especially true for
22 information that's on, say, the schedules of assets and
23 liabilities, as well as the statement of financial affairs,
24 and very important in that statement of financial affairs is
25 the transfers within the one year that the debtors made to

1 insiders, and I'll go into more detail about that later, but
2 right now, except for Mr. Bankman-Fried's name and a few, you
3 know, three or four, of what the debtor believes are his
4 closest associates, the rest of the names of insiders who are
5 customers, be they individuals or be they institutions, have
6 been redacted.

7 So the grounds that the debtors assert -- excuse
8 me, the Movants assert for their position -- there's three --
9 to the extent that the persons or entities are customers,
10 they view their names being released as the equivalent of a
11 customer list that has value, either to sell or as part of a
12 reorganization. And then, separately, under 107(c), as to
13 those customers or creditors who were natural persons --
14 wait, I just want to get clarification here. I'm sorry.

15 Did counsel for the committee say that you were
16 not seeking to redact the names of creditors who are natural
17 persons if they're not customers?

18 UNIDENTIFIED SPEAKER: Under 107(c).

19 MS. SARKESSIAN: Right. If they're not customers.

20 UNIDENTIFIED SPEAKER: Under 107(c).

21 MS. SARKESSIAN: Okay. You are not seeking that,
22 okay. And that is based on the idea of identity theft, based
23 on the name, coupled with the fact that they are a customer
24 of FTX or were a customer. And then the third part of it is
25 those customers or other creditors who are natural persons

1 and are citizens of either, the EU, the U.K., or Japan, and
2 are covered by a foreign privacy law, that the Movants
3 believe prevents their -- or Movants already prevent the
4 disclosure of even their names; although, they have provided
5 no expert testimony whatsoever to interpret these foreign
6 laws.

7 So we're going through each part separately: the
8 value of a customer list. On direct, Mr. Cofsky testified
9 that the customer list has value both, in a 363 sale scenario
10 or a reorganization. On cross-examination conducted by
11 counsel for the Media Objectors, he testified that while he
12 did not know if the customers used platforms of competitors,
13 but to the extent they do, that would degrade the value of
14 those customer names. Mr. Cofsky also acknowledged that the
15 customers have not been able to use the debtors' platform
16 since November, since this case filed, and testified that the
17 longer that the platform is dormant, the more of the value of
18 the customer degrades, due to the fact that they may be using
19 competing platforms.

20 Now, while Mr. Cofsky may not be aware of how many
21 of FTX's customers use competitor's platforms, the
22 declaration of Mr. Sheridan, which has been admitted into
23 evidence and submitted by the debtors and the Committee to
24 support their motion, states in paragraph 25, quote.

25 "It is my understanding that a vast number of the

1 debtors' customers use other online platforms or exchanges to
2 hold assets, e.g., Coinbase, Metamask, et cetera."

3 Now, with respect to a reorganization situation,
4 Mr. Cofsky testified that he believed that the customer lists
5 would have value in that situation and on my cross-
6 examination -- I'm sorry, excuse me -- on cross-examination
7 by the Media (indiscernible) parties, he testified that he
8 had not conducted any survey or analysis to determine whether
9 the customers would want to stay with the debtors and use
10 their platform if and when the platform ever becomes
11 available again.

12 Now on my cross-examination, I asked Mr. Cofsky
13 why he believed that FTX customers who have had their
14 accounts frozen for now 6 months and potentially more than a
15 year by the time we get to the plan stage, the plan
16 solicitation stage with no access to their cash -- not just
17 their crypto, but no access to their cash or their crypto --
18 would continue to be customers of the debtor in a
19 reorganization.

20 And Mr. Cofsky's testimony in response was that
21 one of the reasons is that the customers would be getting
22 shares of the reorganized debtor, although, he admitted that
23 that was not a certainty. He also testified it's possible
24 that customers would be getting stock in lieu of being paid
25 in full for what was in their account at the time that it was

1 frozen.

2 There is no way to know at this point, it would be
3 sheer speculation, that these customers having their assets
4 frozen for so long would want to continue to be customers of
5 a reorganized debtor based on the fact that they might be
6 getting stock, potentially in lieu of getting their cash and
7 their crypto, or some portion of the cash and the crypto that
8 was in their account.

9 Now, with respect to 107(c), Mr. Sheridan
10 testified that if the FTX customer accounts are in cold
11 wallets, which we know from (indiscernible) testifying
12 multiple times in this court that all, or almost all, at this
13 point, but I think it's all of the customer accounts are in
14 cold wallets and the customers have no way to access those
15 accounts.

16 Mr. Sheridan testified in that situation, they
17 could not -- customers could not be subject to having the
18 cash or the crypto in their FTX accounts stolen or, you know,
19 transferred over to them in any fashion because the
20 customers, they can't be subject to a scheme to transfer
21 crypto or cash from an account that they have no access to.
22 Now, I do understand, again, that he had testified or, in his
23 declaration, said that the vast majority of these individuals
24 also have accounts on other platforms.

25 And if I understand, it's possible that they could

1 be subject to some type of scam to access their funds on
2 those other platforms, although, again, having been, as Mr.
3 Sheridan testified on cross, having been subject to
4 essentially a scheme or something very bad happening in the
5 FTX case, that they might be more cautious going forward with
6 other schemes that could be pushed on them, with respect to
7 crypto.

8 THE COURT: Well, just because they're in a cold
9 wallet now doesn't mean -- a scammer could easily contact
10 them, as was done in Celsius, or identifying themselves as
11 counsel to the debtor, saying, We need your keys. We need to
12 get access to your wallet, so that we can make sure when the
13 time comes, we can release it to you. And they gave it to
14 them and now the scammer comes back to the Bankruptcy Court
15 and says, you know, those assets are mine. I've got the
16 keys. They gave them to me. I'm the one who gets that money
17 when the time comes to distribute again under the platform.

18 MS. SARKESSIAN: Well, Your Honor, I guess maybe I
19 misunderstood. I understood from what the witness said that
20 in platforms like FTX, that the individual doesn't actually
21 have access to their keys; that it's kept by FTX. Maybe I
22 misunderstood that.

23 THE COURT: I don't think he said that they don't.
24 He said that might be. They might have given it to them. It
25 doesn't mean they don't have access to it themselves, as

1 well.

2 MS. SARKESSIAN: Okay.

3 THE COURT: They might have given them over to the
4 debtors to say, Here's the access to our keys, but I still
5 have the key, too. I'm not going to just give it to you.

6 MS. SARKESSIAN: You can see how much I know about
7 cryptocurrency; although, I have to say at this point, I'm
8 actually very glad that I know very little, frankly. Well,
9 I'm sorry, I wish I knew more, without having invested; let
10 me put it that way. I'm happy that I knew so little that I
11 was scared to invest.

12 So, Your Honor, I think the Celsius situation is
13 obviously very unfortunate and, of course, everybody wants to
14 avoid that type of a situation. But I think we have very,
15 very sophisticated counsel in this case representing both,
16 the debtors and the Committee, and I feel very confident that
17 they could come up with a way to, you know, prior to, if Your
18 Honor were to deny the motion, to prior to unredacting any
19 information, you know, that the debtor could communicate with
20 their customers in numerous ways to make sure that they were
21 aware that these types of things are possible and to be on
22 high alert and to, you know, sort of have a protocol that,
23 you know, nobody -- anybody that asks for your information,
24 it's not legitimate, other than this method, and the method
25 is there's going to be a bar date set with this Court and

1 you're going to get, you know, in the mail, a bar date
2 notice, a proof-of-claim form, and, you know, I'm sure there
3 are other things that can be done to -- again, there are a
4 lot of sophisticated attorneys here. I'm sure there's a lot
5 of things that could be done to put out, you know, there
6 could be news releases, even, to warn people so that
7 everybody is on high alert.

8 Does that mean that there's not going to be one
9 person that, you know, that might happen to? Of course, Your
10 Honor, we don't know that.

11 THE COURT: Well, there could be many. Even if
12 you're on high alert, I'm aware of very sophisticated law
13 firms who've been scammed. It happens. It doesn't matter
14 how sophisticated you are, how much you're on alert, it can
15 still happen.

16 MS. SARKESSIAN: And we all get things every day.
17 We all get emails every day that if we clicked on them or
18 clicked on the link, I mean, bad things would happen. I
19 mean, unfortunately in this society, everybody needs to be on
20 high alert all the time.

21 And, Your Honor, I take your point, of course, but
22 I think that things can be done to have that extra level of
23 protection. I think in Celsius, I'm assuming there was
24 nothing sent out before this happened. I know something was
25 after it happened, they sent out notices, but with hindsight

1 now, we know that this is a possibility and we could take
2 steps beforehand to protect, which wasn't done in Celsius,
3 you know, because probably nobody thought this was a
4 possibility. I understand some of these scams were quite
5 sophisticated; again, it was a very, very unfortunate
6 situation.

7 I also want to mention in this connection, the Ad
8 Hoc Committee's objection makes an argument that, in was in
9 the paragraph 27 of their reply -- I'm sorry, the reply, not
10 the motion -- that if you know that a corporation is a
11 customer -- so, they're trying to, you know, argue why the
12 corporate customer should get protection. I think under
13 107(c), I believe, is what they were trying to argue.

14 Now, of course, 107(c) does not apply to
15 corporations. It says right there, "individuals," but they
16 said in their reply that, well, if you knew who the
17 corporation was, you could somehow get access to their -- be
18 able to scam their employees.

19 Now Mr. Sheridan, I think, made it clear in his
20 testimony -- no, I wasn't talking of, no, you can't get to
21 the employees. You can get to the customers of the customer;
22 in other words, FTX's customer, if you knew who they were,
23 you could maybe get to the customers of the customer, who
24 might be other corporations, depending on what the business
25 is.

1 I don't think there was any clear testimony,
2 honestly, Your Honor -- maybe I just didn't understand it --
3 as to why it would be any easier to find out the customers of
4 some -- of a corporation that's a customer of FTX versus any
5 other corporation, frankly. I did not think there was clear
6 testimony on that, but, again, no matter what, 107(c) does
7 not apply to anyone who's not an individual. I understand
8 the argument about the customer list being a valuable asset,
9 and we've separately addressed that, but 107(c) simply does
10 not apply to corporations.

11 Now, I'd like to talk about foreign law. The
12 Movants say they are not asserting that foreign law should
13 control over U.S. law, but what they're asking the Court to
14 do is effectively that. They're asking the Court to redact
15 information, much of which is required by the debtors to be
16 filed publicly in bankruptcy cases -- again, schedules and
17 statements of financial affairs, creditor matrix -- where the
18 professionals are required to disclose, as part of their
19 retention applications, arguing that it should not be
20 disclosed for those citizens who are -- so, those individuals
21 who were citizens of these foreign countries, because there's
22 a foreign law and that under that foreign law, that they
23 could, the debtors could potentially, potentially they could
24 be fined.

25 The effect of that is you are giving precedence to

1 the foreign law over U.S. law and the debtors have not come
2 forth with -- the Movants, excuse me -- have not come forward
3 with one example of any situation in which a debtor in a U.S.
4 bankruptcy proceeding was penalized or fined by some foreign
5 authority because they released the names of creditors who
6 were individual citizens of these countries. And I don't
7 believe they haven't given any example of any other party in
8 any U.S. legal proceeding that was penalized for doing the
9 same.

10 And they do have the burden of proof here and they
11 have failed to provide any expert testimony on foreign law,
12 which they could have done, to support their contention that
13 both, the GDPR and the Japanese law prevent the disclosure of
14 even the names of these individuals without, you know,
15 without addresses or email addresses.

16 They've also failed to provide expert testimony to
17 support their contention that the exceptions -- and there are
18 exceptions both, to the GDPR and the Japanese law that allow
19 for disclosure in connection with legal proceedings -- they
20 have not put forth any expert testimony to support their
21 argument that those exceptions do not apply here.

22 They also do not explain how the debtors are going
23 to identify which of their customers or other creditors who
24 are citizens of the EU, the U.K., or Japan, are actually
25 citizens of those countries. In many cases, I mean, the

1 debtors said at the beginning of this case that a lot of
2 cases, they don't even have street addresses for people; they
3 only have email addresses. But even for those that they do
4 have a street address, that tells you residency and, frankly,
5 it doesn't even necessarily tell you that. It's just an
6 address that somebody has where, maybe, they get mail. But
7 even if it's their residence, it doesn't tell you what
8 country they're a citizen of.

9 And I recall that there was some discussion of
10 this in the hearing in January, and I thought that one of the
11 reasons for this other hearing was to give the debtor time to
12 try to figure that out, which of their customers are actually
13 citizens. Well, we have had no testimony whatsoever on that
14 issue or any explanation of how the debtors are going to
15 determine that question of who's a citizen. Because if
16 they're not a citizen, I could be living in Japan, I don't
17 think I'm covered by Japanese privacy laws. I mean, maybe
18 I'm wrong -- again, we don't have any expert here to explain
19 it -- but I don't think it -- I think the -- I don't think
20 the contention is, and I think that the laws actually state
21 that they only apply to citizens.

22 Now, going to the GDPR, again, even though the
23 debtors have the burden of proof here, the Movants have the
24 burden of proof, the motion fails to identify -- and the
25 Movants have not provided any evidence that they have pursued

1 any threshold assessment of the risk of penalization under
2 the GDPR. There is, for example, no proof that was
3 introduced that the debtors sought consent of any of their EU
4 or U.K. creditors or customers, because that's an exception.
5 If you get their consent, you can disclose the names. So
6 there's been no evidence that they tried that route. In
7 addition, and that's under GDPR Article 49(1)(a).

8 The motion also fails to demonstrate that the
9 debtors have made any inquiry with the applicable EU, GDPR
10 supervisory authority, or the U.K. Commissioner about the
11 lawfulness of transferring the names of the EU or U.K.
12 creditors to the U.S., by filing that information in the
13 bankruptcy cases, pursuant to the requirements of the
14 Bankruptcy Code and the Bankruptcy Rules.

15 They could seek a permit from the supervisory
16 authority or the U.K. Commissioner. They have not indicated,
17 they have not produced any evidence to show that they have
18 done so. And, particularly, in light of the tenets of the
19 legal claim exception, the exception to allow information to
20 be produced in legal pleadings and the discretion that's
21 expressly given by the GDPR to the debtors' supervisory
22 authority or the U.K. Commissioner, and the strength of the
23 American laws that mitigate in favor of full disclosure in
24 these bankruptcy cases, these types of diligence by the
25 debtors are crucial at this stage of the -- excuse me -- at

1 the implementation of the GDPR and critical to the debtors'
2 faithful fulfillment of their fiduciary duties in this case.

3 All they do is say, Here's the law. There's a
4 possibility we could be penalized. We haven't taken any
5 steps. We -- there are steps that are set forth in the GDPR.
6 We have not taken steps to find out if we actually would be
7 penalized by doing this. Again, (indiscernible) this falls
8 under the exception. We could go to our supervisory
9 authority under the GDPR and get that information, go through
10 that process.

11 They have not gone through that process. All they
12 said is: There's a possibility we could be penalized,
13 without, again, ever giving any example of any penalization
14 ever happening to any U.S. debtor for disclosing names of
15 citizens of the U.K. or the EU, let alone, Japan.

16 Now, one of the cases that's cited by, I believe,
17 the Ad Hoc Committee in support of their argument in this
18 regard is Forever 21. Forever 21 was mine. I was the trial
19 attorney assigned to this case for the U.S. Trustee.

20 They quote -- they have language that they say is
21 a quote from the transcript that quotes redaction of names
22 and addresses. That quote is not on that page. It is not in
23 the transcript -- I did a word search -- and repeatedly
24 throughout -- it was Judge Gross' case -- you can see
25 throughout, Judge Gross talks about the addresses, the

1 addresses.

2 That's what -- the debtors were represented by
3 Kirkland & Ellis. The debtors moved -- their motion was not
4 to redact the names; it was only to redact addresses of
5 citizens of the EU and also addresses of their employees.
6 But putting that aside for the foreign law, it was just
7 addresses. They did not request the names to be redacted.
8 If you read the transcript, that is clear. There was no
9 order that was entered that allows for the redaction of names
10 of the citizens of the EU.

11 And one can look at the entire docket, there is no
12 evidence that Forever 21 was ever penalized under the GDPR,
13 for releasing names. They're right in the creditor matrix.
14 They're in the schedules. Their -- the addresses were
15 redacted, but the names were not.

16 Now, moving on to Japanese law, in the initial
17 motion that was filed by the debtors, and that was November/
18 December of last year, there's no mention of Japanese law.
19 They just -- I had a paragraph, maybe, on the GDPR. It said
20 very little. But there was no mention of Japanese law at
21 all.

22 And the reply on that motion, which was probably
23 filed in early January, was one paragraph that referenced
24 Japanese law. There were some paraphrases of some portion of
25 it. There was no translation attached. There was no -- even

1 a website given to where to find this Japanese law. Nothing.

2 At the January 20th order that Your Honor entered,
3 there's no reference to Japanese law at all. There's
4 references to citizens of the U.K. or the EU that are covered
5 by the GDPR and I don't believe Your Honor made any ruling
6 with respect to Japanese law.

7 So, in April, the debtors' motion, then,
8 referenced, again, one paragraph about Japanese law with no
9 reference to where one could find an English translation of
10 this law, which is, of course, relatively -- it's not a one-
11 paragraph law.

12 So the question becomes, so what happened between
13 Your Honor's January 20th order and now? Have they released
14 the names of these Japanese citizens? Because if they've
15 already released them -- not for those who are customers. I
16 understand anybody who's a customer, they have redacted that
17 because they're a customer. But any creditor who's a
18 Japanese citizen who's not a customer, if they've released
19 that information, pats on their back. If they haven't, then
20 they've redacted it without Court authority.

21 I don't know what the answer is to that; however,
22 again, when they put in the motion, they did not tell us
23 where one could find an English translation. So in their
24 reply, the Movants say that the U.S. Trustee did not engage
25 regarding the Japanese law.

1 I can tell you why we didn't engage. All I had
2 was their paraphrase of tiny portions of it. It wasn't until
3 the reply that they filed on Monday that they finally gave us
4 a website where we could get the law and it's quite a long,
5 you know, it's not one paragraph.

6 I'm not an expert in Japanese law, of course. I
7 wish there was one here. There is not. But I look at the
8 statute and I see an exception in 27(1) that says, For cases
9 based, there's an exception to the requirements of
10 nondisclosure for cases based on laws and regulations, quote,
11 unquote.

12 The Movants say in their reply, well, that only
13 applies to Japanese laws and regulations, not foreign. But
14 it doesn't say that.

15 So, again, we're in a situation where this Court
16 is asked to interpret Japanese -- a foreign law with no
17 expert to explain it. The plain language, I think, says this
18 can be disclosed and, you know, if it's required to be
19 disclosed under laws and regulations. And it is required to
20 be disclosed under U.S. law.

21 And then the Movants state the reason the Court
22 should consider Japanese laws is because if they do not
23 comply, there could be economic consequences. To that, they
24 cite to the Japanese Financial Instruments Exchange Act of
25 Japan. I do not have a translation. I do not have a website

1 of where to get a translation. I have no idea what that law
2 is about. They are the Movants; it is their responsibility
3 to provide the Court and other parties in interest with where
4 to find certified, you know, correct translations of these
5 foreign laws.

6 If the debtors are going to take the position that
7 this Court should consider foreign laws, I think they have it
8 do everything possible to make the -- that information
9 available, not just -- the information and the interpretation
10 of laws. Because as we know, Your Honor, Your Honor
11 interprets the Bankruptcy Code every day. It's not just you
12 look at a page and see what it says. So, we need an accurate
13 translation and we need to have somebody explain the impact
14 of that law and how it's interpreted and how it's applied,
15 and we don't have any of that.

16 Now, as Your Honor knows, in our objection, we
17 said in the alternative, if Your Honor is going to be
18 granting the relief requested, we wanted to have -- we were
19 hoping to have some carve-outs. The first carve-out has to
20 do with information regarding insiders.

21 The debtors should not be permitted to redact the
22 names of insiders, be they individuals or corporations, on
23 their schedules and SOFAs. And with respect to non -- you
24 know, corporations or other legal entities, they should not
25 be able to redact addresses, as required by the Bankruptcy

1 Code and the Bankruptcy Rules and the official forms.

2 And it doesn't matter, I mean, whether they're
3 customers or not customers, whatever it is, it shouldn't make
4 any difference. I mean, this is a case about wrongful
5 transfers that took place prior to the petition date to
6 insiders. So the statement of financial affairs, you know,
7 one of the critical pieces of it is a disclosure of all
8 transfers made to insiders within the one year prior to
9 bankruptcy. And some of the names are not redacted and other
10 of the names are.

11 And when I asked why, the answer is, Well, we
12 redacted if they were a customer. If the insider was a
13 customer, we redacted their name.

14 Okay. So let's look at that from the legal
15 arguments that they made. Is that protected under 107(b)?

16 I mean, there has to be a balance, of course, here
17 and the think the balance on the information regarding
18 insiders, I think the balance is very strongly in favor, even
19 if Your Honor feels that they, in general, they've met the
20 requirements of 107(b) or 107(c), in general, that these can
21 be an exception. What is value of saying, Well, including in
22 our customer lists are insiders.

23 I mean, of course, that's not a big surprise. I
24 don't think that that's telling anybody something they don't
25 already know, that the insiders of the company may very

1 likely be customers. So I don't think the value, the
2 incremental value of that information is worth anything,
3 frankly.

4 Now, for those insiders who were individuals,
5 under 107(c), I mean, again, the only thing that you know is
6 that their name, which, if they're an insider, I mean,
7 they're either a director, an officer, or they have some
8 other, you know, significant connection to the debtors. That
9 information is probably already publicly available somewhere,
10 but even if it isn't, all you're saying is the person's name
11 and they're a customer of the debtors, which, again, is
12 hardly surprising. I mean, you're not telling somebody
13 that's not easy to guess that insiders of the debtors are
14 likely customers.

15 So it's no the really giving any more information
16 that's what's already out there. And you have to weigh that
17 the importance of knowing who, again, publicly knowing who --
18 which insiders received one-year transfers from these
19 debtors. Any of those other constraints have to be
20 overridden by that.

21 Now, the debtors say, let's get to me taking a 341
22 examination, which I haven't been able to do yet, okay,
23 because how do you ask questions when I can't say the
24 person's name? Your Honor, you have to understand that --
25 and I don't know if Your Honor is aware -- that the schedules

1 and statements filed in this case are thousands and thousands
2 and thousands of pages. So, you have two sets. You have the
3 set that was filed on the public record that has the ECF
4 numbers; that is the information that is redacted. And then
5 you have this other thousands and thousands and thousands of
6 pages of information. You have to try to match it up.

7 And then let's say I match it up, okay, this
8 unredacted version has a person's name and this redacted
9 version doesn't have the person's name. Now, how am I going
10 to conduct my questioning in a 341 in a way -- it's public,
11 right. Creditors can be on, I mean, they're allowed to.
12 They have the right; the 341 is a meeting of creditors. This
13 is a public examination. So if the names are redacted, I
14 cannot say the names.

15 The record of this very important examination is
16 going to be, frankly, unintelligible, because we don't know
17 who they're talking about. And what's going to be -- I don't
18 even know how I can possibly do this. And, again, this
19 information is so critical in this case where there were
20 these massive -- there's been allegations of massive
21 transfers to insiders prior to the petition date. This
22 information just cannot be redacted. The tiny -- whatever
23 tiny value it is to know that an insider of the debtor was a
24 customer or the tiny incremental information about this
25 director or officer of the debtors, you know, was a customer;

1 yeah, again, that's not telling anybody anything they don't
2 already know.

3 And even with respect to other information, not
4 just the one-year transfers, if, for example, there's
5 transfers, there's gifts. You know, there's been a lot of
6 allegations about some of these gifts that were given, okay,
7 charitable gifts. Well, who received the charitable gifts?
8 Well, some of the names are redacted. Why are the names
9 redacted? They're customers.

10 Oh. But you can't tell they're a customer by
11 looking at the statement of financial affairs and say, Who
12 did you give gifts to? You can't tell who's a customer. I
13 mean, that doesn't tell you they're a customer, just because
14 they got a charitable donation.

15 So, you know, they've created a problem. They've
16 made their own problem, effectively. Nobody would have
17 known. I mean, how could you know? Just because somebody
18 gets a charitable donation doesn't mean they're a customer,
19 presumably, one would think.

20 So, and there's other examples, Your Honor. There
21 was a motion that was filed, and I hope I have this
22 correct -- I don't know that it matters that much -- it was a
23 motion, I believe, to reject executory contracts. And, of
24 course, they have to list the names of who the contractual
25 counterparties are. Some of the names are redacted. Some of

1 them weren't and some of them were.

2 When I asked, Why are some of the names redacted?

3 The answer was, Oh, they're customers.

4 Nobody would know they were customers. I mean,
5 there's no way to know that they were customers. Until you
6 redacted the names, there was no way to know that they were a
7 customer.

8 This is not -- and it's different than -- with
9 respect to the creditor matrix, and there's been argument
10 there, you can have a creditor matrix. It doesn't say you're
11 a customer. But the debtors' argument was that the vast
12 majority of our creditors, the vast, vast, vast majority are
13 customers.

14 But, you know, you have a -- that certainly wasn't
15 true with this motion. Maybe half the names or less -- I
16 don't remember -- were redacted. Contract counterparties,
17 some of them are customers. Some of them aren't. There's no
18 way to know if you don't redact the names. So, we also think
19 in that situation, they should not be permitted to redact
20 names.

21 Now, there's also other situations involving the
22 names of insiders, maybe apart from the schedules and
23 statements where if the debtor -- well, the U.S. Trustee
24 would ask, again, if Your Honor is going to grant the motion,
25 generally, is that any time the debtor wants to redact the

1 names of insiders in anything, anything they file, they need
2 to make a separate motion. It should not be a given that the
3 names of insiders could be redacted.

4 There may be other very important filings in this
5 case where they're referenced to insiders. In the plan and
6 disclosure statement, are they going to be redacting the
7 names of insiders because they're customers; again, unless
8 it's Sam Bankman-Fried and four other people?

9 I mean, so, it should not be a given. If it's an
10 insider, they should be required to take that extra step,
11 make a motion, and then we have an opportunity -- then others
12 have an opportunity to respond.

13 THE COURT: Okay.

14 MS. SARKESSIAN: And, Your Honor, in the Third
15 Circuit in Cendant Corporation, which is 260 F.3d 183 (2001)
16 said:

17 "The burden is on the party who seeks to overcome
18 the presumption of access to show that the interests in
19 secrecy outweighs the presumption."

20 And I think that that is especially important when
21 we're talking about insiders.

22 And the purpose, when we're talking about
23 schedules and statements of financial affairs, the purpose of
24 requiring the debtors to disclose all their assets,
25 liabilities, and business dealings is to ensure that the

1 creditors have reliable and accurate information that they
2 can rely on to determine the status of the debtors' financial
3 affairs and to trace the debtors' financial history. That's
4 very important in this case. That's In re Hayes, 549 B.R.
5 677 (Bankr. D. S. C. 2016).

6 The bankruptcy schedules and statements of
7 financial affairs are designed to elicit certain information
8 necessary for the proper administration and adjudication of
9 these cases. The balance of the rights and creditors of
10 other parties for information on insiders against the chance
11 under 107(c), the disclosure of just the names would create
12 an "undue risk of identity theft or other unlawful injury,"
13 which is from the statute, and consider that with respect to
14 an officer, director, or insider, who may already have public
15 information linking them to the debtors, almost certainly,
16 again, that balance really shifts in favor of disclosure.

17 And as to insiders who are not natural persons,
18 the balance of whatever value they have as a customer versus
19 the presumption of public access of information about
20 corporate insiders, okay, that should be released. That has
21 to be released, as well. I mean, to say that we're going to
22 redact the name of a corporate insider because they're a
23 customer, that balance, again, weighs very strongly in favor
24 of disclosure.

25 Just -- I'm almost done, Your Honor -- with

1 respect to the Ad Hoc Committee if the Court does grant their
2 motion, we would ask the right to reserve the right to later
3 seek their names -- just their names, not what their exact
4 holdings are or anything like that, but just their names --
5 to be unredacted if they become involved in plan negotiations
6 or otherwise take a larger role in this case.

7 And the Ad Hoc Committee says that they, quote,
8 Act in a representative capacity for the interests of all
9 non-U.S. customers, not for their own individual benefit,
10 close quote. That's paragraph 18, I think, of their reply.

11 That's a reason to disclose the names. I mean, I
12 think non-U.S. customers have the right to know who is
13 claiming to represent them. I mean, right now, as far as I
14 know, they have not had a large role in the case, but if they
15 step up and the role becomes greater, just like Your Honor
16 said, the names of the committee members -- the members of
17 the Official Committee of Unsecured Creditors, those names
18 have to be released. And if you're a corporate committee
19 member, your address has to be released, as well; Your Honor
20 had already ruled that, previously.

21 Similarly, if the Ad Hoc Committee takes a larger
22 role, we would like, again, the opportunity (indiscernible)
23 now, but the opportunity to be able to argue later that that
24 information, the members' names should be released for the
25 same reason that the Committee's information was released.

1 And, actually, in that regard, there's one thing.
2 The proposed order that Your Honor entered on January 20th
3 had a provision stating that the names of the committee
4 members had to be -- could not be redacted. They had to be
5 released on the top-50 list or whatever the number was in the
6 top creditor list. But that was actually -- that is not in
7 this order, this proposed order. So we would certainly ask
8 that that be -- we want that to be clear that those names,
9 just like Your Honor previously ruled, that that would
10 continue to be the case.

11 And just in conclusion, Your Honor, you know, one
12 thing that the debtors argue is that, and, again, the Movants
13 argue is that, well, they're only asking for another 90 days.
14 Although, again, for some, they're asking for permanently,
15 for the customers who are individuals, they want that
16 permanently, but, otherwise, it's just for 90 days. It's
17 already been 6 months, so another 90 days, now we're at 9
18 months, and debtors' counsel indicated they might ask for a
19 further extension.

20 So, you know, we're -- it's been a long time for
21 this information to remain redacted. So, again, Your Honor,
22 we believe that the Movants have not met their burden of
23 proof, but especially, again, with respect to information
24 relating to insiders or customers or non-insiders in the
25 context that one could not tell that they were a customer

1 from the context of the disclosure, we think that those
2 exceptions can be made and we think there's a reasonable and
3 important basis to make those exceptions if Your Honor is
4 otherwise inclined to grant the motion.

5 Unless Your Honor has any other questions, my
6 argument is concluded.

7 THE COURT: Okay. Thank you.

8 MS. SARKESSIAN: Thank you.

9 THE COURT: I don't know about anybody else, but I
10 need a lunch break. So we're going to -- let's recess until,
11 we'll say 1:30. We'll come back at 1:30, okay. Thank you.

12 (Recess taken at 12:49 p.m.)

13 (Proceedings resumed at 1:37 p.m.)

14 THE CLERK: All rise.

15 THE COURT: Thank you, everyone. Please be
16 seated.

17 Ms. Townsend, whenever you're ready.

18 Ms. Townsend?

19 MS. TOWNSEND: Good afternoon, Your Honor. Katie
20 Townsend, on behalf of the Media Intervenors: *The New York*
21 *Times*, *The Wall Street Journal*, Bloomberg LP, and the
22 *Financial Times*.

23 I think it's important to address at the outset
24 the applicable burdens, as well as to address, I think, why
25 the Media Intervenors are here in the first place. Though, I

1 think it should go without saying -- I'll say it anyway --
2 the shared interests of the Media Intervenors here is
3 straightforward. They're news organizations and they want to
4 report on what is undeniably a newsworthy bankruptcy stemming
5 from the massive collapse of a prominent cryptocurrency
6 platform.

7 That collapse sent shockwaves, not just for the
8 cryptocurrency industry, but the entire financial industry.
9 And at this point, we don't even know where those shockwaves
10 both, individually and institutionally, have hit the hardest
11 or what institutions may have the largest or no exposure, as
12 a result. That is a compelling and legitimate interest that
13 the press and the public have in the names of the creditors,
14 also customers, in these Chapter 11 proceedings.

15 And it's a particularly salient point when we're
16 talking about the top-50 unsecured creditors. That
17 distinction is not -- I think it's, as has been suggested, an
18 arbitrary one. The top-50 creditors are those institutions
19 and individuals who have the most exposure or have been most
20 affected in this bankruptcy proceeding. So I think --

21 THE COURT: Let me ask you a question. What are
22 your clients going to do with this? If I say the names have
23 to be redacted -- be released, what are you going to do with
24 that information?

25 MS. TOWNSEND: You know, I can't speak exactly as

1 to what my clients would do with it. I assume that the
2 reporters would review that information and they would use it
3 to report on exactly what I said.

4 THE COURT: But if all I give are the names, what
5 are they going to do? They're going to go -- the first thing
6 they're going to do is go try to identify who the people are,
7 right?

8 MS. TOWNSEND: Well, some --

9 THE COURT: They're not going to report that
10 somebody named Mr. X who lives in Shanghai had a lot of money
11 invested in FTX tokens unless they verify that information.
12 And the only way they can do that is try to figure out who he
13 is. Who's Mr. X?

14 MS. TOWNSEND: Well, if we're talking about, Your
15 Honor, about, say, the top-50 creditors. Let's say we're
16 talking a lot about -- we're talking about some institutional
17 investors. So in cases like that, I think my clients
18 probably would ask for comment or attempt to evaluate what
19 the impact, potential exposure of that institution, which
20 again could have broader financial impacts.

21 There are also individuals who, frankly, my
22 clients would think would be important to report on. If
23 Jamie Dimon, for example, someone whose views on what
24 investments are good investments to make, has a lot of
25 exposure in -- from his, let's say -- and, again, I don't

1 know this; this is just a hypothetical -- has some -- is one
2 of the top-50 creditors of FTX, would that be newsworthy?
3 Would that be important for the public at large and people
4 who may consider Jamie Dimon's investment moves to be one
5 they would want to follow, is that relevant? I think so.

6 So, would my clients report on it? I wouldn't be
7 here if my clients weren't -- didn't think it was important
8 to understanding the entirety of not just what's happening in
9 this bankruptcy proceeding, but the impact of FTX's collapse,
10 to understand who was potentially hurt the most. I think we
11 do think that's important and that's why I'm here.

12 So, I think the attempts to paint the news media's
13 motives to inform the reader, its readers, and the public at
14 large about what's happening here, as in how illegitimate, as
15 wrong -- is wrong and I think it should be treated as such.
16 That said, the Media Intervenors' motives aren't really
17 relevant and it isn't the Media Intervenors' obligation, or
18 any of the objectors' obligation to demonstrate specific harm
19 from a failure to disclose that information. It's not our
20 evidentiary burden, as has been suggested, to demonstrate
21 that we have some other interests beyond an informational
22 interest in that information.

23 The starting point is, as Your Honor knows, the
24 presumption of public access under the First Amendment, and
25 Section 107 of the Bankruptcy Code. Transparency is the

1 rule. It's the default in all bankruptcy cases, including
2 bankruptcy cases in the cryptocurrency context.

3 So the debtors, the Official Committee, the Ad Hoc
4 Committee, they bear the burden to demonstrate with evidence,
5 not explanation or conjecture, that all the information they
6 want to redact falls within the scope of either
7 Section 107(b) or 107(c).

8 I want to start with 107(b), which as Your Honor
9 knows, permits the protection of an entity with respect to a
10 trade secret or confidential research, development, or
11 commercial information. This is a statutory and narrow
12 statutory exception. It's been interpreted to apply to
13 information that's critical to the operations of an entity
14 and in order for the exception to disclosure to apply
15 in 107(b), the disclosure of information at issue must
16 reasonably be expected to cause the entity commercial injury.

17 We understand why the Court at the second day
18 hearing, would want to take an incremental step to seal the
19 names of FTX's customers and creditors, all of them, for 90
20 days; a time period that we understand was calculated to
21 maintain the *status quo* while defendants -- debtors, rather,
22 explore potential valuations of their assets. But it's now
23 been more than a month since the expiration of that original
24 90-day redaction period and the debtors haven't given this
25 Court an additional basis to conclude that the names of

1 approximately nine million customers fall within the
2 definition of commercial information and warrant continued
3 redaction.

4 The parties are continuing to rely on the
5 testimony, solely on the testimony of Mr. Cofsky, which he
6 supplemented yesterday, where, respectfully, a little more
7 than he gave this Court back in January. In fact, I think
8 the debtors and the Official Committee seek to concede that
9 there isn't much more to say at this point. According to
10 their own joint motion, they have yet to determine how
11 they're going to utilize what they call their "customer
12 lists."

13 They assert that the names of the FTX customers
14 are a potential source of value, but being just a possible
15 source of value isn't enough. And even assuming that it was,
16 the record doesn't establish the disclosure of the names of
17 FTX's customers or any subset thereof, would destroy that
18 potential value.

19 So, Mr. Cofsky maintains that the debtors'
20 customers base or maybe even just the customer list itself
21 could have potential value in a restructuring or a sale, but
22 he has yet to provide any testimony as to what he thinks that
23 value actually is, that specific value. And he hasn't given
24 us any real world examples of what value, if any, has been
25 ascribed to a list of names of customers standing alone, or

1 otherwise, in other cryptocurrency transactions, for example.

2 Moreover, the primary concern that Mr. Cofsky has
3 identified, the poaching or potential poaching of FTX's
4 customers by competitors, I think, is particularly misplaced
5 in this context. We're not talking about some list of
6 exclusive customers. As counsel for the U.S. Trustee pointed
7 out, the Official Committee is a witness. Mr. Sheridan
8 testified that a vast number of the debtors' customers use
9 other online platforms or exchanges to hold digital assets;
10 in fact, he testified that it's common for cryptocurrency
11 holders to use multiple wallets or online platforms to store
12 their cryptocurrency assets.

13 So simply put, whether or not one or more of the
14 nine million or so customers with FTX accounts moves to a
15 competitor or is poached by a competitor, assuming they were
16 not already using a competitor platform, which they very well
17 may be, that may have nothing to do at all with whether or
18 not that customer also will continue to use FTX's platform at
19 some restructuring in the event that it continues to exist.
20 That determination is likely to have a lot more to do with
21 how that customer feels about FTX, rather than how it feels
22 about some competitor, because it's not an exclusive
23 relationship.

24 Nor, does the evidence, I think, support a
25 conclusion that it's reasonably to be expected that a

1 competitor could or would effectively use this list of names
2 to attempt to poach customers. So, Mr. Cofsky testified
3 yesterday that he directed his team to locate through Google,
4 Facebook, or Twitter, some mechanism, including through those
5 platforms themselves, like a Twitter direct message, some way
6 to contact the top-200 customers of FTX and they were able to
7 do so for fewer than half of them.

8 And he testified he thought it was highly unlikely
9 that they identified the right person for only 34 percent of
10 them. He didn't testify as to whether was any effort to
11 actually validate the results of those -- of that experiment
12 by determining whether or not they had, in fact, located
13 accurate, current contact information for those individuals
14 that they had searched for. But even his sort of best
15 estimate of whether or not they had done a good job was only
16 34 percent.

17 That experiment, one that I think is based on, not
18 representative, and I think concededly, not a very scientific
19 methodology, fails to establish that FTX's customers could be
20 expected to, or could or would effectively operationalize the
21 names of customers to debtors' disadvantage.

22 Moreover, I think even if we assume that
23 Mr. Cofsky's testimony, which is all this Court has in front
24 of it, was sufficient to establish that the names of all of
25 FTX's roughly nine million creditors who are also customers,

1 fall within the scope of Section 107(b), there's been no
2 showing differentiating between different subsets. I think
3 there was the suggestion that Mr. Cofsky testified that the
4 top-200 creditors, that those names would be the most
5 valuable, but Mr. Cofsky didn't draw distinctions between
6 specific values for specific subsets of customers.

7 So there's no showing that a small subset of that
8 nine million, say, the top-50 creditors, would constitute
9 confidential, commercial information, that if disclosed,
10 would damage in a serious way, whatever potential value that
11 set of names might have.

12 I think debtors, at this point, have had, and the
13 moving parties, at this point, have had an ample opportunity
14 to attempt to meet their burden to demonstrate that these
15 names are, in fact, a primary or critical asset to their
16 business. There are extraordinary circumstances and
17 compelling need that warrant, frankly, the extraordinary
18 level of secrecy that they're asking this Court to impose,
19 they have not met that burden, in our view, and under 107(b).
20 So, we would respectfully urge the Court not to extend the
21 redaction deadline on that basis.

22 With respect to 107(c), this is a provision, as
23 Your Honor knows, that permits the Court to protect an
24 individual with respect to the following types of
25 information: to the extent the Court finds the disclosure of

1 such information would create undue risk of identity theft or
2 other unlawful injury to the individual or the individual's
3 property.

4 As an initial matter, Section 107(c) applies only
5 to the names of creditors, customers who are individuals, not
6 entities. It's right there expressly in the statutory
7 language. I don't believe that either the debtors or the
8 Official Committee, from what we can tell, unlike the Ad Hoc
9 Committee, suggest otherwise and take the position that it
10 should apply to the names of entities.

11 But for what it's worth, the Ad Hoc Committee
12 offers no case law to support this sort of expansive view of
13 Section 107(c), as applicable to entities, the names of
14 entities. So I think any argument here, Your Honor,
15 regarding the application of Section 107(c) should be
16 understood to be relevant only to those creditors, customers,
17 who are individuals, who are natural persons.

18 As to those individuals who are natural persons, I
19 do take issue with the suggestion that I think that's been
20 made a number of times today that Media Intervenors are being
21 dismissive of potential risks of harm to individuals who may
22 be targeted or may be the victims of cybercrime. The Media
23 Intervenors aren't being dismissive; I think we're being,
24 frankly, realistic.

25 Certainly, as we don't dispute Mr. Sheridan's

1 testimony that criminal actors like cryptocurrency. It's a
2 means, a method for them to effectuate crime; at the same
3 time, as he testified, his testimony is he suggests there's
4 really no limiting principle to the notion of who can be
5 targeted and who can be a victim of these crimes.

6 He provided no evidence to demonstrate that
7 current cryptocurrency or known cryptocurrency users are more
8 frequently the victims of the various online scams that he
9 testified about or even that they're more frequently the
10 targets of those kinds of scams. And as he testified,
11 unfortunately, online attacks and cyber threats, stalking and
12 bullying are endemic in today's virtual world. And it's not
13 just in the cryptocurrency context, but bankruptcy
14 proceedings, in general, have information about creditors who
15 may have a significant amount of money tied up in a
16 bankruptcy who may be vulnerable for that reason. To the
17 extent we take this argument to its logical conclusion, we're
18 effectively flipping the presumption of access in bankruptcy
19 proceedings on its head.

20 So I do think that there are ways. And, again,
21 we're not dismissive of these risks, I think the position
22 that we're taking is that any restrictions on the public's
23 right to access here need to be narrowly tailored and that
24 there are alternatives to redacting the names of all of the
25 customers or a subset of those customers, and those

1 alternatives can include things like the types of notices,
2 advanced notices that were sent to customers involved in the
3 Celsius case after the fact.

4 We now have the benefit of the unfortunate
5 incident that occurred in the Celsius case. We can
6 preemptively, or the Court, counsel, sophisticated counsel
7 representing all the various parties in this case can
8 preemptively inform interested parties, this is a potential
9 risk, that they should be wary and mindful of these kinds of
10 scams. So there's a benefit to what happened in the Celsius
11 case that can be translated here to help, potentially, alert
12 people to the potential risks that may be out there.

13 There's also just the fact that even if these
14 individual customers were not savvy or aware of the potential
15 risks or of investment scams, they are now. And as
16 Mr. Sheridan testified, in his experience, individuals tend
17 to become more wary of scams when they have already fallen
18 victim to one.

19 But I want to emphasize, too, Your Honor, I think
20 the evidence, it's difficult because we don't know. We
21 certainly don't know, but there's also been no testimony
22 about the types of individuals. And, you know, parties can
23 speculate as to whether or not they're sophisticated or not
24 sophisticated, at different sort of levels of investment in
25 the FTX platform.

1 I think, as Mr. Sheridan testified on cross, I
2 think, you know, when we're talking about the top 50
3 individuals with multimillions of dollars invested in
4 cryptocurrency, I don't think there's -- we have any basis,
5 really -- there's been no evidence to suggest -- that there
6 are novice investors in the cryptocurrency context, that they
7 don't have the means or wherewithal or sophistication to
8 attempt to protect themselves from what, again, are
9 unfortunately ubiquitous, I think, attempts at cybercrime.

10 And, particularly, I did want to emphasize to you
11 a point that I think Mr. Sheridan made in his direct about
12 the cryptocurrency industry generally. Being a higher-risk
13 investment when it comes to making an individual sort of more
14 susceptible to, or a more -- let me put it this way -- a more
15 desirable target, potentially, for criminals, you know, he
16 indicated that the cryptocurrency industry doesn't provide
17 the sort of traditional level of protection that other
18 financial industries have.

19 I just want to note that, you know, we've talked
20 about the customers as sort of one big group, but, certainly,
21 customers who -- and, particularly, customers who are
22 sophisticated investors in cryptocurrency are well aware of
23 those risks. They're aware that they're investing in an
24 industry that doesn't have those same protections; an
25 industry where cyber criminals may be more interested in

1 cryptocurrency assets, than other types of assets.

2 And so, again, this isn't to sort of diminish or
3 minimize any risk of, or any harm that a victim of cybercrime
4 suffers when they have cryptocurrency or other assets sold,
5 but I think -- or stolen, but I think to the extent that
6 we're talking about very sophisticated investors, when they
7 invest in a risky type of cryptocurrency investment or they
8 make a risky investment, they understand all the risks that
9 are -- we have to assume they understand the risks that are
10 attached to that investment.

11 I won't spend much time on foreign law because I
12 think counsel for the U.S. Trustee covered that quite well,
13 but I think just to reiterate, and thoroughly, just to
14 reiterate the Media Intervenors' position that I don't think
15 we even need to be talking about the GDPR or the content of
16 any foreign law, because public access to judicial records
17 filed in this bankruptcy proceeding is governed by the
18 Bankruptcy Code, the Bankruptcy Rules, the First Amendment,
19 and related U.S. law that mandates access or presumes access.

20 I think the debtors and the official committee's
21 reliance on Section 105 to argue that the Court should take
22 some additional precautions with respect to what they argue
23 might be the potential application of foreign law is a
24 concession, frankly, that neither Section 107(b), nor 107(c)
25 apply here. And I would emphasize that Your Honor noted in

1 the January 11th, second day hearing, that the Court would
2 need evidence, expert testimony, something to address the
3 foreign law issues in this case.

4 The debtors, the Ad Hoc Committee, the Official
5 Committee have all had the opportunity to present that
6 evidence and haven't done so. So, we would state or restate,
7 as we have in our briefing, that we don't think foreign law
8 has any basis or influence on what the Court's obligations
9 are, with respect to access to the records that are filed in
10 this proceeding.

11 And finally, Your Honor, I just want to put this
12 in a little bit of context, because I think one of the things
13 that is most striking and, frankly, most problematic about
14 the arguments that are being made for redaction in this case
15 is the lack of any limiting principle. I think the debtors,
16 the Official Committee, and the Ad Hoc Committee argue at
17 times, expressly for a rule that would apply in all
18 cryptocurrency bankruptcies, not just this one.

19 We've heard repeatedly, this is a cryptocurrency
20 case. Much of Mr. Sheridan's evidence turns on, again, the
21 appealability of cryptocurrency to would-be criminals and bad
22 actors.

23 I don't think that the notion of a *per se* rule
24 that permits redaction of all creditors who are also
25 customers in the context -- or who are individuals, to be

1 clear -- under 107(c), but all creditors or customers under
2 the 107(b) context, a *per se* rule that would permit redaction
3 of all of the names of those creditors, customers in every
4 bankruptcy case involving cryptocurrency, I think, is deeply
5 troubling.

6 And I don't think that there's been any evidence
7 to suggest that FTX, these Chapter 11 proceedings are
8 different in some sense or in some way than other bankruptcy
9 proceedings, with respect to the arguments that are being
10 made by the parties.

11 And if you have no further questions for me, Your
12 Honor, I will conclude my argument.

13 THE COURT: Okay. Thank you.

14 Mr. Glueckstein, what, exactly -- I just want to
15 make sure I understand what the debtors want to have sealed
16 at this point. Are we sealing all customers? Are we sealing
17 customers and creditors? Are we sealing -- what are we
18 sealing? What are we asking to be sealed here?

19 MR. GLUECKSTEIN: What is at issue today,
20 specifically, is the following. Number one, the sealing of
21 all customer names, pursuant to Section 107(b). We've
22 requested that for an additional period of 90 days. That
23 includes all names for all purposes: individuals and
24 institutional. Number two, an alternative argument made
25 under Section 107(c). That argument is requesting that the

1 Court grant the authority to grant -- to redact on a
2 permanent basis, all individual customer names.

3 If that relief is granted, that is, it obviously
4 supersedes the 90-day period with respect to the individual
5 portion under 107(b). But they're completely separate legal
6 standards, of course, Your Honor, but it does not moot it
7 because we need the request with respect to the institutional
8 customers to preserve the entirety of the customer lists, all
9 the reasons Mr. Cofsky testified about.

10 Those are the primary relief that has been
11 requested. If that relief is granted today, while there's a
12 lot of focus on an objection from Ms. Sarkessian, the
13 incremental relief, if you think about the entirety of the
14 picture of what's contained in the motion, the incremental
15 relief under what's being termed "the foreign law" questions,
16 would only be non-customers, individual non-customers, the
17 names of those individual non- -- the names and addresses of
18 those individual, non-customers, who would be protected by
19 the GDPR or the Japanese privacy law. And as I represented
20 to the Court in my argument earlier, if we put all of those
21 pieces together, we believe it has a very limited set of
22 employees in those jurisdictions who are not otherwise
23 customers on the exchange.

24 That's what we're talking about. Your Honor's
25 order in January already authorized the redaction of

1 individual addresses of customers on a permanent basis. The
2 U.S. Trustee did not object to that.

3 So the question before the Court is dealing with
4 the names of customers, which is a contentious issue, as Your
5 Honor has heard over the last two days, and the names and
6 addresses of institutional customers that are on our customer
7 list. And we have obviously taken the customer list question
8 and the monetization of that incrementally, as Your Honor
9 guided us in giving us the initial three-month period, and we
10 have asked for the extension for all the reasons that Mr.
11 Cofsky testified about yesterday.

12 The 107(c) issue, of course, redaction of customer
13 names -- and, again, addresses are already -- of individual
14 customers' names under 107(c), again, the addresses are
15 already permanently redacted -- that is a permanent request
16 and that is new evidence, entirely new evidence that we
17 (indiscernible) before the Court in an evidentiary way that
18 was supported by Mr. Sheridan's testimony and his
19 declaration.

20 THE COURT: Okay. Thank you.

21 MR. GLUECKSTEIN: Just a few points on the
22 specific arguments made, if I could, Your Honor, in rebuttal.
23 And I think it's helpful, and I appreciate the Court's
24 question on focusing on what we're actually talking about
25 here from a relief perspective.

1 The other thing I think it's important for us to
2 step back and focus on is what are we asking? We are not
3 asking for some *per se* rule that applies to all types of
4 cases. We're not asking for some *per se* rule that applies to
5 all cryptocurrency cases.

6 Your Honor has been presented with evidence, with
7 respect to the facts of these cases. Your Honor is also well
8 aware from overseeing these cases since November, of the
9 complexities that these cases present, the sheer size of
10 these cases, and the issues, many of which are novel,
11 presented by these Chapter 11 cases.

12 With respect to 107(b), Your Honor, there's no
13 carve-out in Section 107(b) for media outlets who might want
14 to report on high-profile people that might be on our top-50
15 or top-200 or top-9 million creditor list if the information
16 is protected by the statute as commercial information.

17 Mr. Cofsky did testify yesterday, despite
18 representations made today, that the top-200 creditor list on
19 our creditor list, he testified very clearly in the course of
20 doing his analysis, represents over \$2 billion in claims.
21 There's a very significant value represented by that top-200
22 creditors that some subset of which the Media Objectors are
23 asking to be disclosed.

24 Mr. Cofsky also testified very, clearly, in
25 response to questioning on cross-examination, that his

1 opinion, as the debtors' investment banker, is that there is
2 value to the customer names, irrespective of whether the
3 customer has an account on another exchange or not. And more
4 importantly, or as importantly, I should say, whether the
5 debtors are going to try to reorganize or restart the dot com
6 exchange or sell the customer list as either on its own or a
7 part of a set of assets is still to be determined, as
8 Mr. Cofsky testified.

9 And the premise of his testimony, based on the
10 process that's being conducted now by the debtors, is that
11 competitors, third parties have -- see value in that customer
12 list. So they're going to put whatever value they put on
13 their list and they're going to do whatever valuation they're
14 going to do as to whether those customers or whatever
15 analysis they might be able to do about whether -- and risk-
16 adjust for those customers being on other exchanges or
17 whatever they might do, but at the end of the day,
18 Mr. Cofsky's clear testimony said his view, as the debtors'
19 investment banker, is that there's value available to these
20 estates by preserving the confidentiality of the customer
21 list, and that's the argument that we've asserted under
22 Section 107(b).

23 There was suggestion about, Well, we can solve
24 lots of problems if we just give notices or give more
25 notices. I guess that starts to get into 107(c) issues on --

1 I'm sure Mr. Pasquale will have something to say about
2 that -- but as the Court observed during the course of the
3 hearing today, there's certainly limitations to noticing. I
4 don't think anybody would suggest that just sending out a
5 notice to people is going to solve these problems from that
6 perspective.

7 With respect to the foreign law issues raised,
8 again, this is, you know, this is ancillary to the relief as
9 we've presented it. Yes, we have not brought foreign law
10 experts in to interpret those statutes. I think the term
11 which is used in argument by the Media Objectors' counsel,
12 that that relief, that incremental relief is somewhat
13 precautionary. That is how we've presented it.

14 We don't -- until very recently, that would not
15 have been controversial in this district. Ms. Sarkessian
16 talked about how we haven't presented a case where there has
17 been a debtor that has been sanctioned under these
18 circumstances. Until very recently, the U.S. Trustee's
19 Office didn't object to this relief; in fact, we cite in our
20 reply papers, a string cite of cases, including cases by Your
21 Honor where this relief with names and addresses was
22 routinely granted.

23 And we understand, and we understand that there
24 are issues presented and issues that courts have begun to
25 grapple with respect to whether some of these foreign

1 statutes would take precedence over U.S. Bankruptcy law
2 issues. I don't think, though, Your Honor, under the
3 circumstances, that that precludes this Court in the
4 context -- again, everything that we're doing here -- if Your
5 Honor agrees with the Movants that we are going to be
6 redacting and it's appropriate under the facts of this case
7 to redact the customer lists, to redact the customer names,
8 we submit that the risk that is presented by the plain
9 language of the statute, that we don't need an expert to
10 testify about, is enough to grant that incremental relief.
11 But it is certainly very much ancillary to the relief we're
12 asking for today.

13 And, finally, Your Honor, just in response,
14 because there were suggestions made or intimations made by
15 Ms. Sarkessian, the debtors have complied with the Court's
16 January order, to the letter of that order. So, we have not
17 made redactions in Japan or any other law that's not covered
18 by that order. And so, I just wanted to be clear about that,
19 we have -- obviously, that order -- there was an evidentiary
20 hearing to get that order put into place. There were
21 negotiations over the language in that order, including with
22 the U.S. Trustee's Office, and the Court entered that order
23 in January and that order remains in place. That was a final
24 order on our first day motion and the motion we're asking for
25 today is, obviously, incremental to that.

1 THE COURT: Address Ms. Sarkessian's argument that
2 the debtors have redacted the names from other pleadings of
3 customers.

4 MR. GLUECKSTEIN: We have redacted names of
5 customers from --

6 THE COURT: She raised the contract rejection
7 motion, the names were redacted in that because the debtors
8 said, Well, they were customers.

9 MR. GLUECKSTEIN: Well, we have redacted customer
10 names. I don't know if that was in the motion itself. I
11 think this mainly occurs in things like affidavits of service
12 and the like. But we have redacted customer names wherever
13 they have appeared. We have done that after consultation
14 with the Creditors Committee.

15 We do, you know, it has been our position that
16 customer names should be redacted. That has been done or
17 that's been authorized, and so we have -- in order to assure
18 that customer names are not in the public domain on the
19 docket of this case in an involuntary way, we have redacted
20 those names wherever they appeared.

21 THE COURT: Well, here's -- I have a problem with
22 that one. I have a problem with the issue that if, in fact,
23 there was a motion to reject contracts that included the
24 names of the counterparties to those contracts and some of
25 the names of those counterparties were redacted because

1 they're also a customer of the debtor, that's problematic
2 because no one would know that they were a customer of the
3 debtor unless you redacted it. They wouldn't know it because
4 they're already redacted from the customer list. So you
5 can't redact a name from a motion when they're a counterparty
6 to a contract. I'm just using that as an example.

7 I think one of the other ones she used was
8 charitable donations, parties who receive charitable
9 donations. You can't just redact their names because they
10 also happen to be a customer because, again, nobody would
11 know that they were a customer.

12 MR. GLUECKSTEIN: So, I don't recall the contract
13 rejection motion that Ms. Sarkessian is referring to. I
14 don't recall offhand whether that was in the -- is the
15 scenario that Your Honor is positng.

16 This issue arises mostly in the context, as I
17 said, of things like affidavits of service, where we're
18 serving people who are in capacities where they might also be
19 customers, things like that.

20 But I understand Your Honor's point and we
21 obviously will take -- you know, we will obviously proceed
22 forward with any guardrails that Your Honor imposes upon us.

23 THE COURT: All right. Thank you.

24 MR. GLUECKSTEIN: Thank you.

25 MR. PASQUALE: Good afternoon, Your Honor. Ken

1 Pasqual for the Committee. Just very quickly.

2 I think I've addressed in my prior comments and in
3 the Committee's pleadings, most of the points that were
4 raised in opposition to the motion, but just two things if I
5 may? First, with respect to the notices that might go out,
6 as Ms. Townsend said, "after the fact," we shouldn't have to
7 deal with "after the fact" attempts to correct information
8 when it is disclosed. That's the genie example I mentioned
9 earlier. Once the names are out, no matter how much warning
10 we give people, the harm can be done, as Mr. Sheridan
11 testified.

12 Counsel also argued that customers accepted the
13 risks attached to an investment in cryptocurrency. Yes, as
14 an investment in cryptocurrency. They did not accept the
15 risk of an involuntary -- excuse me -- of involuntary
16 disclosure of their names in a bankruptcy case that they
17 didn't expect to happen and certainly didn't accept the risks
18 that such a disclosure would expose them too, again, as
19 Mr. Sheridan testified.

20 That's all I have, Your Honor. Thank you.

21 THE COURT: All right. Thank you.

22 MS. SARKESSIAN: Your Honor, could I have a moment
23 to speak to counsel for the Ad Hoc Committee before he does
24 his argument?

25 THE COURT: Okay. If it will resolve the issue.

1 (Pause)

2 MR. WENDER: So, Your Honor, for the record, David
3 Wender on behalf of the Ad Hoc Committee.

4 And just to explain the discussion before, there
5 was a little bit of back-and-forth with Ms. Sarkessian and
6 myself as to whether the language came from in our pleading.
7 We referenced the transcript. That actually was incorrect.
8 It's in the order where we got that quoted language from.

9 Ms. Sarkessian rightly pointed out, basically, it
10 wasn't in the actual transcript. There's history. I was not
11 involved in that case, but we got the language from the
12 order. I don't think that's essential for today, but I just
13 wanted to clarify that it was coming from different places.
14 Neither one of us were attempting to mislead the Court.

15 Now, Your Honor, you asked Mr. Glueckstein what he
16 wanted and since we also have our separate motion, I wanted
17 to answer that question on behalf of the Ad Hoc Committee,
18 because our motion was filed -- first of all, we joined the
19 relief requested in the joint motion, because we think it's
20 appropriate to protect customers.

With respect to the Ad Hoc Committee's motion, it was to protect the disclosures in the 2019 statement to redact customer names and addresses. Ad Hoc Committee members are non-U.S. customers and that information is sought to be protected.

1 The reason why we seek it both under 107(b)
2 and 107(c) in relying on the evidentiary record is a little
3 different because in 2019, and if you looked at the actual
4 redacted 2019 that's on file here, it lists redacted form
5 name, the redacted form address, but it also discloses their
6 economic interests, which is required under 2019, including
7 in certain instances, where they had records of actual,
8 traceable cryptocurrency.

9 And so, and the reason why I wanted to focus on
10 that and talk about 107(c), again, under 107(b), the debtors
11 in the joint motion say they want to protect those customers
12 because they might be able to obtain value from it.

13 But in 107(c), and people's focused on, well, it
14 only protects individuals, and that's what it references.
15 But if you actually look at the language in 107(c), is it
16 protects the individual if the disclosure would create undue
17 risk to individual or the individual's property.

18 And this, the property that we're talking about
19 is, again, it's the investments of these entities and some of
20 them it's, Oh, there's no evidence, but I'll just state it or
21 single-person LLCs, but their property, we could put at risk.
22 And if you look at the individual and if you look, again,
23 at 107(c), it references 102(d)(7) of Title 18 -- or
24 sorry -- 102(d) of Title 18.

25 And Subsection 7 of that says, any name -- and

1 we're talking about the information protected -- any name or
2 number that may be used alone or in conjunction with other
3 information to identify a specific individual. And by having
4 this information, you heard the testimony about the ability
5 to trace on the blockchain and the dark web who owns it and
6 who's involved, we think 107 would apply.

7 Whether it's to everybody, maybe since the joint
8 motion isn't seeking that relief, but we think relative, at
9 least to the 2019 statement, that that would apply to
10 protect, so we don't have to come back in 90 days to re-seek.

11 Now, again, we said this in our pleadings, without
12 prejudice to the U.S. Trustee to come and seek disclosure;
13 that reservation is always there for her.

14 So what the Ad Hoc Committee is seeking for is an
15 order clarifying that when we file our 2019 statements, the
16 ones that have already been filed, that we may redact the
17 names and addresses of our individuals -- of our customers
18 that are both, individuals and non-individual members of the
19 Ad Hoc Committee.

20 THE COURT: What does the Ad Hoc Committee intend
21 to do?

22 MR. PASQUALE: We are hopeful to be engaging in
23 the process there. We have attempted, at one point earlier
24 in the case, we've talked about an official committee that
25 didn't go anywhere. We're trying, hopefully -- and it's

1 early stages -- to hopefully, although, not in a
2 representative capacity, because we're not, but ensure that,
3 and although there is an unsecured committee, we think that
4 there are certain aspects that the Unsecured Creditors
5 Committee cannot fully represent non-U.S. customers, and so
6 we are hopeful that we will be involved in the process. So
7 what extent? We will see.

8 To hope that there's a plan that we can, as a
9 voice and someone who can speak to non-U.S. customers can
10 say, we think is in the best interests of all non-U.S.
11 customers, as well, and support that.

12 THE COURT: All right. Thank you.

13 MR. PASQUALE: Thank you, Your Honor.

14 THE COURT: All right. Well, here's what I'm
15 going to do. With regard to the redaction of customer names
16 under 107(b), I think the evidence presented was
17 uncontroverted that customer identification has value. It
18 has value to the debtors' estates. And under 107(b), the
19 customer names constitute a trade secret, as I said, back in
20 January. And as a result, those names can continue to be
21 redacted for an additional 90 days while the debtors continue
22 to seek how they're going to come out of these bankruptcies;
23 if they're going to sell the assets, including the customer
24 lists, or if they're going to reorganize, in which case,
25 they're going to want the customer lists.

1 The fact that the customers might not be exclusive
2 customers, and I don't -- some of them might be. Some of
3 them might not. I mean, we've got nine million customers;
4 that's a lot of people. I have no way to parse that. I
5 don't think anybody has a way to parse that out.

6 So the best way to deal with the issue is to say
7 that all of the customer names continue to be redacted.

8 The 107(c) issue, Mr. Sheridan introduced very
9 compelling testimony; again, uncontroverted testimony, about
10 how customers can be identified just by a name. It's
11 something that happens all the time in our society today,
12 given the access to, not just the types of information we all
13 have access to -- Google, Twitter, et cetera -- but the dark
14 web, where there's all kinds of information about individuals
15 that can be found with just a name.

16 And he testified, again, very compellingly, that
17 if they have a name and they are an FTX customer, they can be
18 targeted, and that is what we need to protect here. It's the
19 customers that are the most important issue here. I want to
20 make sure that they are protected and they don't fall victim
21 to any types of scams that might be happening out there.

22 So I'm going to grant the motion, as well, to
23 redact customer names under 107(c) for individuals, on a
24 permanent basis. It obviously does not cover companies or
25 entities.

1 On the foreign law issue, I simply have no
2 evidence to support it. I know as Mr. Glueckstein pointed
3 out, I've entered orders in the past, but it's always been
4 when there was no objection. But there's an objection now
5 and it's the right of the U.S. Trustee to make that
6 objection, so I needed to have something to show that there
7 would be harm to these individuals who might be located in
8 the U.K., the European Union, or Japan, that would result in
9 some harm to them, and I have nothing.

10 The statute, itself, at least the GDPR, is not
11 exactly clear to me. I mean, it says they have to be
12 protected, but I really -- as I said in January, I would have
13 liked to have someone come and testify and tell me that if
14 you order the release of these names, the debtors are subject
15 to subject to some kind of sanctions.

16 I find it hard to believe that a court in the U.K.
17 or the European Union or in Japan, would say, I'm going to
18 sanction the debtors for releasing names when they were
19 ordered to do so by a Court of the United States. That just
20 doesn't seem to be a potential possibility. So I'm going to
21 deny the motion to that extent.

22 On the 2019 issue for the Ad Hoc Committee, in is
23 a horse of a different color. You have an Ad Hoc Committee
24 who wants to participate actively in the case. As I said
25 with the members of the Unsecured Creditors Committee, if you

1 want to be a member of the Unsecured Creditors Committee, you
2 have to identify yourself because people have a right to know
3 who they're litigating against and they can't do that if they
4 don't know who they are.

5 So I don't think that they are protected
6 under 107(c) or (b), and those names have to be disclosed if
7 they're going to participate. Now, I understand that you may
8 have had some of your clients sign up for this, with the
9 expectation that I would keep that information sealed, so I'm
10 going to give you an opportunity to go back to your clients
11 and say, The judge said we can't seal these names and
12 information, so we're going to have to disclose it. Do you
13 still want to be a member of the Committee so that they can
14 have a chance to withdraw if they want to, all right. So
15 that motion is denied.

16 Any questions about that one?

17 Ms. Sarkessian?

18 MS. SARKESSIAN: Yes, Your Honor. I do have a few
19 questions. Thank you, Your Honor.

20 Again, for the record, Juliet Sarkessian on behalf
21 of the U.S. Trustee.

22 How about redaction of the names of the insiders
23 who happen to be customers, is your ruling -- does your
24 ruling allow them to continue to redact the name of the
25 insiders on statement of financial affairs and other

1 documents?

2 THE COURT: For now, yes.

3 MS. SARKESSIAN: Okay, thank you.

4 THE COURT: They're subject to the 90-day rule.

5 MS. SARKESSIAN: Even if you cannot determine from
6 the document that they are, in fact, customers?

7 THE COURT: Well, I mean, the debtor can only
8 redact them if they are a customer, so we're going to have
9 to -- if the debtors are redacting names of insiders who are
10 not customers, that would be a problem. But I didn't hear
11 they were doing that.

12 MS. SARKESSIAN: No, Your Honor. I'm sorry, I
13 misspoke.

14 What I mean is if you look at the document, from
15 the context of it -- okay, here, transfers to insiders --
16 from the context, there's no particular reason to believe
17 that anybody is a customer or not a customer.

18 THE COURT: Well, that kind of goes back to what I
19 was talking to Mr. Glueckstein about with regard to the
20 charitable donations --

21 MS. SARKESSIAN: Right.

22 THE COURT: -- and the motion for assumption or
23 rejection of the contracts.

24 You can't redact a name in some other motion where
25 they are a party to that motion, simply because they're also

1 a customer, because, as I said, nobody would know that
2 they're a customer. I agree with you on that.

3 MS. SARKESSIAN: So, Your Honor, if, in the
4 statement of financial affairs, when you look at the
5 transfers to insiders, there's nothing to indicate. There's
6 no way to know if any of those insiders are customers.

7 So given that fact, is Your Honor ruling that in
8 you cannot tell looking at the statement of financial affairs
9 that these insiders happen to be customers, that they would
10 have to disclose those names?

11 THE COURT: Yes, they do.

12 MS. SARKESSIAN: Thank you, Your Honor.

13 And just a final question, Your Honor. On the
14 redaction of customers who are individuals, their names, is
15 that on a permanent -- Your Honor has it on a permanent
16 basis?

17 THE COURT: Under 107(c), yes.

18 MS. SARKESSIAN: Okay. Thank you, Your Honor.

19 THE COURT: Okay.

20 MR. WENDER: Your Honor, really quick, and I
21 apologize. David Wender, on behalf of the Ad Hoc Committee.

22 In filing an unredacted 2019, is it just the names
23 that have to be unredacted or the addresses, as well?
24 Because under 2019, we have to disclose it. It's -- provides
25 for the name, the address, and disclose what economic

1 interest.

2 THE COURT: I think everything has to be disclosed
3 under 2019.

4 MR. WENDER: Okay. Thank you for that
5 clarification.

6 THE COURT: Yeah.

7 Okay. Any other questions?

8 (No verbal response)

9 THE COURT: Okay. All right.

10 That brings us to the main event, I guess,
11 everybody's been waiting for; how I'm going to rule on the
12 application or the motion by the JPLs to lift the automatic
13 stay.

14 I was thinking about this lying in bed at 3
15 o'clock this morning, trying to figure out what I'm going to
16 do with this mess and I was thinking: What is the more
17 important thing here? What do I have to consider? What's
18 the most important thing to consider?

19 Excuse me, I'm having a little trouble with my
20 voice.

21 The most important issue in this case is what's in
22 the best interests of the customers and the creditors,
23 because that's what this case is all about; getting value
24 back to the customers and the creditors. And that should
25 inform all of my decisions and then, particularly, this

1 decision about how to -- whether or not to lift the automatic
2 stay.

3 So, what are the issues involved here? And it's a
4 tangle of issues here. We have who are the customers and
5 whose customers are they? Are they customers of FTX Trading
6 or other U.S. debtor entities? Or are they customers of FTX
7 Digital, Inc., the Bahamian entity? Are the assets at issue
8 held by the U.S. debtors or the Bahamian debtors? Are they
9 held in trust for the benefit of creditors or do they belong
10 to the estates, the various estates?

11 If the assets are FTX Digital's, and I can make
12 that conclusion at some point during the course of this case,
13 are they subject to a clawback as fraudulent conveyances?
14 And those are issues that also have to be decided in this
15 case.

16 Where are the assets located? Are they located in
17 the U.S., which gives me *in rem* jurisdiction over them? Are
18 they located in the Bahamas, which gives the Bahamian Court
19 the *in rem* jurisdiction?

20 As I said yesterday, I'm not going to defer to,
21 and I would not defer to any other court the question of:
22 What constitutes assets of the debtors in the cases before
23 me?

24 And contrary to Mr. Shore's colorful argument,
25 it's not based on the fact that the Bahamas don't have

1 nuclear weapons. I would do that even if it was France, as I
2 think he referred to.

3 And so the question, then, is, so where can that
4 relief be granted? This is the only Court that can grant
5 complete relief regarding the assets that are under the
6 jurisdiction of this Court that relate to -- that are being
7 held by the debtors in these cases and that are subject to
8 the question of how to allocate them. Do they all belong to
9 the U.S. debtors? Do some of them belong to the Bahamian
10 debtor?

11 At this point, I don't know; that's an open
12 question.

13 Of course, this question about *in rem* jurisdiction
14 begs the question that the assets that are held in the
15 Bahamas, the Bahamian Court has control over them; they have
16 *in rem* jurisdiction. So, how -- and that Court could make
17 its own decisions about how those assets are going to be
18 distributed and they can complete -- and the Bahamian Court
19 could say, We don't care what the U.S. Court decides; in
20 fact, I think that's what the JPLs argued to me on the first
21 day of this case. Judge, we don't care if -- the Court in
22 the Bahamas isn't going to care what you do. They're not
23 going to enforce any of your orders. I thought that might
24 have been an overstatement, but that's what was said.

25 So, you know, it puts me in an awkward position,

1 obviously. I certainly would have no basis to order the
2 Bahamian Court to do or not do anything. I can't. I have no
3 control over that Court and what they decide to do.

4 But because the JPLs are proposing to make a
5 filing with the Court in the Bahamas, which, contrary to
6 their arguments, goes well beyond merely asking for the
7 Bahamian Court to establish protocols. My reading of the
8 application is they're asking the Court to make decisions
9 about whose assets are they? Are they assets of the U.S.
10 debtors? Are they assets of the Bahamian debtors? And not
11 just the assets located in the Bahamas, but all the assets,
12 including those located, here in the United States.

13 So something -- I lost my train of thought
14 there -- so what the JPLs are doing is they're asking the
15 Court in the Bahamas for substantive relief that would
16 absolutely have an effect on the debtors of this case, so
17 they need to have relief from the automatic stay, because the
18 assets that are here that are under the control of this Court
19 and the debtors here, are subject to the jurisdiction of the
20 Court.

21 So, have the JPLs met their burden of establishing
22 the need for relief from the automatic stay?

23 From the evidence that was introduced at the
24 hearing the debtors established that there are several forms
25 of harm as to the U.S. debtors: the criminal costs

1 associated with litigating the same issues in two different
2 courts. It's not insubstantial; we're talking millions of
3 dollars.

4 The confusion to creditors who are trying to
5 figure out, am I a creditor in the Bahamas or am I a creditor
6 in the United States? And those creditors, again, I go back.
7 The first issue, the first concern is, how do we protect the
8 creditors and the customers? Those creditors, some of them
9 might want to participate, as the Ad Hoc Committee here wants
10 to participate in the case here.

11 Are they going to have to retain counsel down
12 there and participate in both proceedings and increasing the
13 costs to them? And, by the way, incremental costs for the
14 debtors to appear and the Creditors Committee to appear in
15 the Bahamas, comes out of the pocket of the creditors. And
16 everything goes back to the creditors, the interests of the
17 creditors.

18 And, finally, the delay in the case. It's going
19 to take time for both courts to litigate the issues. And I
20 know there was some discussion about having a combined
21 hearing with the Bahamas and this Court at the same time.
22 I'm not going to opine on that one way or the other at this
23 point. But I will point out that the cost of doing that are
24 not insubstantial either.

25 As I mentioned yesterday, I was involved in the

1 Nortel case and I know it cost tens of millions of dollars
2 just to set up the infrastructure to be able to have a joint
3 hearing with the Canadian Court.

4 So we're talking about a lot of increased costs
5 that comes out of the pocket of the customers and the
6 creditors.

7 The only harm articulated by the JPLs that I could
8 discern from the testimony is that they can't carry out their
9 fiduciary duties because they can't go to the Bahamian Court
10 ask and for them to decide these issues. But as the debtors
11 pointed out yesterday in their argument, that's not the issue
12 here. The harm to the JPLs is not the issue; it's the harm
13 to the customers and the creditors.

14 Now, and finally, just to close out on the
15 standard for prevailing on a motion to lift stay, is
16 prevailing on the merits of the underlying claim. And that,
17 I don't have any idea at this time. I have no idea. It's an
18 open issue. It's got to be decided. And there has to be a
19 trial if it can't be resolved. We have an adversary
20 proceeding pending here.

21 And I know the JPLs have filed a motion to dismiss
22 that, at least partially, on the idea that it was in
23 violation of the agreement between the parties on how to
24 handle the issues between the two courts. But I would ask
25 the JPLs to reconsider that, because we can't. We've got to

1 get this case moving and if we're going to be arguing over
2 issues like that, it's not helpful.

3 Because at the end of the day, even if it did
4 violate the agreement between the parties, I'm probably going
5 to allow it to go forward, unless there's some other basis
6 for dismissal. And I admit I haven't spent a lot of time
7 looking at the motion to dismiss, but if it's only based on
8 the idea that the debtors here violated the agreement between
9 the parties, I might say, Yeah, I'll slap you on the wrist
10 for violating the agreement, but I'm not going to dismiss and
11 have to start all over again. Let's get the case moving.
12 Let's get those cases moving forward.

13 So on the -- again, prevailing on the underlying
14 issues, I don't know.

15 Now, the JPLs are certainly free to go to the
16 Bahamas Court and tell them what happened here today, advise
17 them of my ruling. And I don't know what the Bahamian Court
18 will do in response to that, but again, I have no control
19 over the Bahamian Court. But that might be enough to satisfy
20 their fiduciary obligations.

21 At least they'll go back and say, We tried. This
22 is how it came out. We lost and we need to move forward.

23 Now, I do believe, as I mentioned, you know, the
24 *in rem* issue, as between assets here and assets in the
25 Bahamas, obviously, the Bahamian Court is free to ignore any

1 ruling I make, whether or not the assets belong to the U.S.
2 debtors or the Bahamian debtors. And they can go forward and
3 have their own hearing and make a ruling on how that's going
4 to play out for the assets that they hold.

5 So the case is begging for some kind of a protocol
6 between the parties to resolve that issue alone. I mean,
7 we're going to end up -- there's a possibility it could end
8 up with inconsistent rulings in both courts and that might
9 happen if we have a protocol or not.

10 But at least I'm going to order the JPLs and the
11 debtors to mediate the issue. Retain a good mediator,
12 someone with experience in the area, so come up with a way to
13 see if there's any kind of protocols that can be put in place
14 to address these issues.

15 In the meantime, we're going to go forward with
16 the adversary proceeding that I have before me and I want to
17 do it in as expeditious manner as possible, because we're
18 wasting the customers -- or the customers' assets are wasting
19 away every day that we spend in bankruptcy. So let's try to
20 find a way to cooperate and find a way to resolve these
21 issues.

22 So, for now, I'm going to deny the motion to lift
23 the stay. Parties should meet and confer and issue a form of
24 order under certification of counsel.

25 Are there any questions?

1 MR. WENDER: Your Honor, the Committee would just
2 ask to be a party to that mediation, as well.

3 THE COURT: Absolutely, yes. Absolutely.

4 MR. WENDER: Thank you.

5 THE COURT: Anything else?

6 MR. GLUECKSTEIN: Thank you very much, Your Honor.
7 That is clear to the debtors.

8 The only other thing just to note before we close,
9 there was on the agenda today, which I think flows well from
10 Your Honor's comments, is an initial scheduling conference in
11 the adversary proceeding between the debtors and FTX Digital
12 Markets. We have been talking with counsel for FTX Digital.
13 I believe we have agreed on a form of a schedule to move that
14 litigation forward. I understand we have a pending motion to
15 dismiss, and, of course, Your Honor's comments this
16 afternoon.

17 So, think for purposes of the conference, I think
18 the update to the Court is that we intend to submit that
19 scheduling order for Your Honor's consideration. That
20 scheduling order is designed, from the debtors' perspective,
21 to ensure that we get to a trial on any of the issues that
22 might need to be tried related to those issues, consistent
23 with our confirmation schedule that Mr. Dietderich laid out
24 yesterday, and I think we have a schedule to do that.

25 THE COURT: Okay. Excellent.

1 I don't know if my comments make any difference in
2 what that schedule is going to look like, but you can
3 resubmit it under COC.

4 MR. GLUECKSTEIN: Thank you, Your Honor.

5 MR. WENDER: And, Your Honor, just for
6 clarification with the Committee asking, as well, with the Ad
7 Hoc Committee now, at least attempting to, could we at least
8 attempt to participate in that mediation, at least as an
9 observation party, at a minimum?

10 THE COURT: I think as an observation party,
11 that's a good idea, because, obviously, as I've said, you
12 know, the creditors might want to participate and it's going
13 to depend on what happens in each of the two courts.

14 MR. WENDER: Thank you, Your Honor.

15 MR. SABIN: Your Honor, Jeff Sabin from Venable,
16 on behalf of --

17 THE COURT: Yes, you can participate, poo.

18 MR. SABIN: Thank you so much.

19 (Laughter)

20 THE COURT: Okay. Well, let me throw this out,
21 too, is there any -- are we at a stage now where a mediation
22 of the ultimate issues is possible or do the parties need to
23 engage in some discovery first?

24 MR. GLUECKSTEIN: Your Honor, I think we should --
25 I should probably confer with counsel for the JPLs. The

1 debtors have been talking, trying to starting the
2 conversation with the JPLs. We're obviously very interested,
3 as Mr. Dietderich outlined yesterday, in moving the plan
4 process forward and having an ultimate resolution that would
5 resolve these issues in that context. We've started that
6 discussion, early stages. We would love to fold the JPLs
7 into that plan process.

8 To the extent we need to resolve the litigation
9 issues raised in the adversary proceeding, you know, as I
10 said, I think we are certainly hopeful to move that forward
11 expeditiously, but we probably should confer on, you know,
12 the scope of mediation. That might make some sense.

13 THE COURT: I would appreciate the parties doing
14 that. Because I think, in my view -- I mean, you can put
15 forward a proposed plan, but nothing's going to happen until
16 we know the resolution of who owns which assets. I mean, you
17 can't confirm the plan until we know whose assets they are.

18 So that's -- it seems like the front-running issue
19 here is the litigation; am I wrong?

20 MR. GLUECKSTEIN: Well, I mean, conceptually, yes,
21 Your Honor, but there are certainly scenarios where if we
22 were -- and this is just a hypothetical, obviously, at this
23 point -- there are certainly scenarios where if the debtors
24 and Digital Markets, as you said at the outset, because it
25 total leads to getting assets to customers, could reach an

1 understanding of how to make that happen, some of those
2 questions might become less important if it was on a
3 consensual basis, right.

4 So there would certainly be ways to distribute
5 assets in both estates, potentially, through a plan process
6 in a consensual manner, but it's too early to put specifics
7 on that. But I think the premise of Your Honor from the
8 debtors' perspective is absent an agreement with the JPLs on
9 how to administer all of the collective assets, then we would
10 obviously need to decide those issues.

11 THE COURT: Right.

12 MR. GLUECKSTEIN: But if we had an agreement on
13 that question, we might not need to.

14 THE COURT: Right. That's what I'm trying to get
15 at: Get an agreement on the issue.

16 MR. ZAKIA: Your Honor, Jason Zakia of White &
17 Case for the JPLs.

18 I actually agree with Mr. Glueckstein, not on too
19 much, but on a few things, one of which is, I think Your
20 Honor's suggestion concerning the scope of mediation is
21 constructive. Obviously, we have to consult with our clients
22 in order to give you an official answer, but I think that's
23 something we should consult about.

24 And we absolutely agree with Your Honor's comment
25 that, you know, absent consensual resolution, resolution of

1 these issues, regardless of what court it's going to be
2 resolved in, which is a separate question, but resolution of
3 who owns what assets is going to be an issue that has to be
4 resolved before, you know, any plan process can be concluded.

5 So, I would -- we'll work with the debtors on the
6 order; hopefully, we won't need your help on that one, on a
7 form of order. And I'll also consult about the scope of the
8 mediation and report back to the Court on whether we can have
9 an agreed scope on that.

10 THE COURT: Okay. Excellent. Thank you.

11 MR. ZAKIA: Thank you very much.

12 THE COURT: Anything else for today?

13 MS. SARKESSIAN: Your Honor, on the -- Your Honor,
14 I'm sorry, it's been a long day -- on the two sealing
15 motions, should counsel submit a proposed order under COC?

16 THE COURT: Yes. Yes, please.

17 MS. SARKESSIAN: Thank you -- or two proposed
18 orders, I guess.

19 THE COURT: Two orders, yes.

20 Okay. Anything else?

21 UNIDENTIFIED SPEAKER: No, Your Honor.

22 THE COURT: Okay. Thank you all very much.

23 We're adjourned.

24 COUNSEL: Thank you, Your Honor.

25 (Proceedings concluded at 2:45 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

6

7 | /s/ William J. Garling June 12, 2023

8 | William J. Garling, CET-543

9 | Certified Court Transcriptionist

10 | For Reliable

11

12 | /s/ Tracey J. Williams

June 12, 2023

13 | Tracey J. Williams, CET-914

14 | Certified Court Transcriptionist

15 | For Reliable

16

17 | /s/ Coleen Rand

June 12, 2023

18 | Coleen Rand, CET-341

19 | Certified Court Transcriptionist

20 | For Reliable

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